

83-6591

No.

IN THE SUPREME COURT OF THE UNITED
STATES

October Term, 1983

RATIMIR MAXIMILIAN PERSHE,
Appellant,

v.

ENRIQUE IRIZARRY, President of the
Council of Higher Education of the
University of Puerto Rico; ISMAEL
ALMODOVAR, President of the Univer-
sity of Puerto Rico; ANTONIO MIRO
MONTILLA, Chancellor of the Río
Piedras Campus of the University
of Puerto Rico; DENNIS MARTINEZ
IRIZARRY, Dean of the Law School of
the University of Puerto Rico,
Appellees

On Appeal from the Supreme Court of
the Commonwealth of Puerto Rico

Jurisdictional Statement

Name of Counsel of Record
(still not available)

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TABLE OF ABBREVIATIONS

AP JUR STA	Appendix to this Jurisdictional Statement.
CHE.....	Council of Higher Education of the University of Puerto Rico.
F.....	With number refers to documentary proof submitted to the Courts below.
JUR STA	This Jurisdictional Statement.
LPRA.....	Laws of Puerto Rico Annotated.
NORMS.....	COMPLEMENTARY NORMS FOR PROCESSING DEFERMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL, Certification number 59, 1972-73, promulgated by CHE February 9, 1973.
P.....	With number refers to documentary evidence submitted to the Courts below.
PR PET CERT	With number refers to the page of the Appellant's Petition for Certiorari to the PR SCt of January 27, 1983.
PR.....	Commonwealth of Puerto Rico.
PR Const.....	Constitution of the Commonwealth of Puerto Rico.
PR SCt.....	Supreme Court of the Commonwealth of Puerto Rico.
PR SuperCt.....	Superior Court of the Commonwealth of Puerto Rico.
J.....	With number refers to documentary proof or evidence in AP JUR STA.
J*.....	An asterisc following the letter J indicates that the document referred to is fully or in part in English.
UPR.....	University of Puerto Rico.
US Const.....	Constitution of the United States.
US SCt.....	Supreme Court of the United States.

HLNS.....Natural Science of Human Law

BPLT.....Biophysical Law Theory

A. QUESTIONS PRESENTED

QUESTION

1. Can the state university officials deny a

hearing to a member of the university personnel as has been done to the appellant, Professor of Law, when there are irregularities in the certain proceedings of the state university, which would adversely affect the appellant's interest if such irregularities are not corrected [cf. F564-583 (J*); F740-742 (J); and S() and ff., infra] and when never before, the State University has denied such a hearing to any member of its personnel, since the beginning of its operations in 1903?

1). Would the fact that the proceedings in which such irregularities occurred were the proceeding for deferment of retirement, and the fact that this is the first time that a member of the personnel raised a claim against the irregularities, under the above mentioned conditions [cf. Question 1], make such a denial of the hearings rational?

2). Under the conditions mentioned above [cf. Question 1], would the fact that the appellant does not belong to the political party in power, votes across the party lines, and is considered by the political groups to be useless for political moves within the Faculty of Law [cf. P137-138 (J); J352; S() and ff., infra] make such a denial of the hearings rational?

3). Under the conditions mentioned above [cf. Question 1], would the fact that the appellant is developing a concept of the biophysical function of human law, and that this concept is considered not to be traditional,

is suspected even to tend to remove the field of law from a direct political control [cf. §(17)-(27), p.13-23, §(51)-69, p.43-56, G. STATEMENT OF THE CASE, infra; and J*1200-1214], make such a denial of the hearing rational?

(1). Can the said University officials deny a hearing to a member of the personnel as is the appellant, Professor of Law, after the appellant has notified in his letter of May 13, 1981, directed to the appellee Irizarry, the then President of the CHE [cf. F564-583 (J*)], that there are certain irregularities which would affect the appellant's Petition adversely if not corrected? Would such a denial be rational on the ground that, at the time (May 13) when the appellant complained about the irregularities,^{1/} he did not know that these irregularities included secret fraudulent imputations against his professional competence, made intentionally by the said Dean in the Petition for Deferment, on April 14, 1981 [cf. F507-511 (J)], in conspiracy with the Chancellor, the President of the UPR, and the President of the CHE [cf. §(70)-(), p.56- , G. STATEMENT OF THE CASE, infra]?

(2). Would such a denial as described above [cf. Question (1)] be rational on the ground that, when the members of the CHE voted, on May 13, 1981, on petitions for deferment, they did not know anything about Professor Pershe and voted against his petition without having had a chance of examining or discussing it, thus indirectly denying

^{1/}Before July 15, 1981, the date when the appellant for the first time received his Petition and saw the filled in imputations against his professional competence made fraudulently by the "superior functionaries" [cf. 705-710 (J)].

the appellant a hearing without having known anything about him or his complaint of May 13, 1981, [see the Minutes of the CHE of May 13, 1981 and the testimony suppressed by the appellees and by the Courts below]? Would such a denial be rational on the ground that, although the CHE received the said letter of May 13, 1981, on the same day and four hours before its meeting on petitions for deferment started, nevertheless the then President of the CHE, appellee Iri-zarry, failed to submit the said letter to the members of the CHE who were present at that meeting and thus let them vote against the appellant's deferment unaware of any irregularities [the testimony about this fact was suppressed by the CHE and the Courts below; and cf. §() and ff., G. STATEMENT OF THE CASE, infra]?

(3). Can the CHE deny a hearing to a member of the university personnel as is the appellant, Professor of Law, by leaving the petition of the appellant for reconsideration [cf. F622 (J)] unresolved for lack of sufficient vote in its meeting of June 26, 1981, thus again, indirectly having denied a hearing to the appellant [cf. the Minutes of the CHE of June 26, 1981; cf. F699 (J); and §() and ff., G. STATEMENT OF THE CASE, infra]?

I such a denial rational in spite of the fact that it was based on the secret fraudulent reports to the effect that the deferment of the appellant has to be judged, not by the criteria of the length of service and of the merits, established by the said NORMS... FOR... DEFERMENT [cf. P270-276 (J)], but by the criteria of whether there is a lack of teaching personnel, established by the regulation

about hiring retired personnel [cf. F63-72 (J)]?

Is such a denial rational, in spite of the fact that these reports had been fabricated in conspiracy by the then acting Chancellor, Alicia Carlo de Net, and, separately, by the said Dean, both reports dated June 25, 1981 [cf. F674-675 (J) and cf. F682-683 (J)], and had been handed out secretly to the members of the CHE [cf. 8() and ff., G. STATEMENT OF THE CASE, infra]?

(4). Can the CHE deny a hearing to a member of the personnel as is the appellant, Professor of Law, by a repetition, on September 16, 1981 [cf. F747-750 (J)], of its denial of deferment of May 13, 1981 [cf. F591-595 (J)]? Is such a repetition rational when its then President, the said appellee, Irizarry, advised the appellant on May 19, 1981 [cf. F600 (J)]; and cf. the testimony which was suppressed by the Courts below] to ask the Chancellor for reconsideration of his unfavorable recommendation, because, according to said Irizarry, if the Chancellor changes his recommendation, the CHE would automatically change (in favor of the appellant) its decision? Is such a repetition rational when at the time when the Chancellor was about to change his recommendation into a favorable one between September 8 and 16, 1981 [cf. F737-739 (J) and cf. F740-742 (J)], and cf. F759-760 (J)], the CHE suddenly, and against its agenda, already overcrowded with the problems of the students strike,^{1/} decided again against the deferment of the appel-

1/And contrary to the official (but false) information repeatedly made by Mr. Burgos, the Associated Secretary of the CHE, and by his coworker, to the appellant, on September 10, 11, 14,

lant and thus, again, indirectly against giving the hearing to the appellant [cf. §() and ff., G. STATEMENT OF THE CASE, infra]?^{2/}

QUESTION

2. Can the decision of the PR SCT, to the effect that "granting the deferment asked for by Professor Pershe is one of absolute discretion of the university authorities,"^{3/} sustain as Federally constitutional said NORMS in their erroneous application to the appellant by the way of the intentional secret fraudulent "reports," secretly imputing the professional incompetence to the appellant^{4/} and by the special way of the perjured Affidavit of March 2, 1983,^{5/} to fraudulent the effect that, eight months before having made this Affidavit, Mr. Fortuño, the attorney who was hired by the State, by the CHE, and by the Associate Secretary of the CHE, Mr. Burgos, to commit said perjury,^{6/} gave, on August 17, 1981, to the appellant an official hearing?^{7/}

15, 1981, that under no condition his case could have been considered in the meeting of September 16, 1981. In the context of all the circumstances mentioned in this question, it is apparent that this sudden and "irrational" placing of the case of the appellant on the agenda of the CHE for the meeting of September 16, 1981 had only one purpose: to interrupt the reconsideration proceedings of the appellant's deferment which the Chancellor opened at this office on September 8, 1981, according to the initial suggestion of the said Irizarry, the then President of the CHE [cf. §() and ff., G. STATEMENT OF THE CASE, infra]^{2/} See how, on October 2, 1981, [cf. F759-760 (J)] the Chancellor informs the fact that the CHE suddenly intervened with the CHE's decision of September 16, 1981 against the appellant and thus deprived the Chancellor of "the administrative authority to take care of the Petition" of the appellant. ^{3/}This decision (on appeal from a preliminary injunction in favor of the appellant), dated March 26, 1982 [J123], suspended the effects of the decision of the PR SuperCt of February 4, 1982 [J60-62], deciding the preliminary injunction in favor of the appellant's reinstatement into his professorship and research. This decision of the PR SCT was not based on any evidence or arguments, but merely on the statement as quoted below, made in the Motion of the appellees of March 24,

THE REST OF THE QUESTIONS PRESENTED is still in manuscript form and will be immediately send to the US SCT as supplement.

1982 /J /, announcing that the appellees were sending in a Petition for Certiorari for review of a decision handed down by the PR SuperCt, ordering the appellees to reinstate the appellant in to his position as the Professor of Law "in spite of the fact that he has reached the age of sixty five, obligatory age for retirement, and after his Petition for Deferment had been denied."

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B. Parties

A list of all parties to the proceedings in the court whose judgment is sought to be reviewed is in the caption of the case in this Court.

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D. Reports

There is no reference to any official or unofficial reports of any opinions delivered in the courts or administrative agency below, since there are none.

E. Grounds of Jurisdiction of this Court

This Court's jurisdiction is invoked under Section 1258(2) and (3) of Title 28, United States Code. The Supreme Court of Puerto Rico, in denying appellant's Petition for Certiorari to review a Summary Judgment of the Superior Court of Puerto Rico (Court of First Instance), sustained the federal constitutionality of a statute of the Commonwealth of Puerto Rico as construed in its application to the facts of this case by said Superior Court, and also sustained its Federal constitutionality as a promulgated statute, independently from its construction, with the effect of depriving the appellant of his law professorship and of his fundamental research, and of suppressing the development of his natural scientific concept of law, without due process of law and by denying him the equal protection of the laws.

The said statutes of the Commonwealth of Puerto Rico are the following:

- 1) COMPLEMENTARY NORMS FOR PROCESSING DEFERMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL, Certification number 59, 1972-73, promulgated by the Council of Higher Education of the University of Puerto Rico, February 9, 1973.....J
- 2) General Regulations of the University of Puerto Rico, article 11, Certification number 114, 1980-81, promulgated by the Council of Higher Education of the University of Puerto Rico, January 16, 1981.....J

- 3) Law of the University of Puerto Rico, Law
No.1 of January 20, 1966, as ammended,
18 LPRA #601 et seq.....J
- 4) Law of Civil Procedure of Puerto Rico, 1959,
Rule 1 and 36.3, 32 LPRA Ap. III, R 1 and
36.3 (1979).....J
- 5) Constitution of the Commonwealth of
Puerto Rico, Bill of Rights, Article II,
secs. 1, 4, 7, and 8.J

The appellant has drawn and is drawing in question the validity of said statutes as construed in said application, and on their face regardless of their application, on the ground of them being repugnant to the Constitution of the United States.

In addition, the appellant has claimed and is claiming that Puerto Rico state officials, acting under color of Puerto Rico state statutes, regulations, custom and usage, deprived him of his procedural, substantive, and judicial due process rights (5th and 14th Amendments), of his right to the equal protection of the laws (5th and 14th Amendments), of his professional liberty (5th and 14th Amendments), of his freedom of expression (1st Amendment), and of his de facto property (5th and 14th Amendments), as well as of his privileges and immunities as a citizen of the United States (14th Amendment). Appellant has also claimed and is claiming against deprivation of his rights to remedies under 42 USC § 1983 and 1985(3).

The final decree of the Supreme Court of Puerto Rico denying said Petition for Certiorari was entered on May 26,

1983. This final judgment (decree) appealed from is a denial of a Petition for Summary Judgment made by the appellant upon a Petition for Certiorari to the Supreme Court of the Commonwealth of Puerto Rico. This denial was made without ever granting a hearing, although the evidence submitted to the Superior Court (Court of First Instance) of the Commonwealth of Puerto Rico, San Juan Chamber, and to the Supreme Court of the Commonwealth of Puerto Rico, required a summary judgment for the appellant.

This denial affirmed the Summary Judgment of the Superior Court (Court of First Instance) of the Commonwealth of Puerto Rico, San Juan Chamber, in favor of the appellees. This Summary Judgment of the Superior Court was rendered without any notice or warning, without granting a hearing, and refusing to accept the evidence--(Fl-1207)--offered by the appellant.

This Summary Judgment affirmed the denial of the Petition for deferment of retirement of the appellant, which was based on a report secretly fabricated, intentionally and in conspiracy, by the appellees charging the appellant with professional incompetence. This affirmed denial also approves a denial of a hearing which every member of the UPR has been given by an impartial board, whenever one would suffer irregularities in proceedings of the UPR, of which one would become a victim. The appellant is the first one in the whole history of the UPR who has been denied such a hearing.

A Notice of Appeal to the Supreme Court of the United States was filed in the Supreme Court of Puerto Rico and

in the Court of First Instance (the Superior Court of Puerto Rico) on June 3, 1983 (the main part of the record being in possession of the Supreme Court and the interlocutory part being in possession of the Superior Court). The undersigned attorney, Alberto E. Lugo Janer,^{1/} had been the counsel for the appellant in the Courts of the Commonwealth of Puerto Rico since September 1982 and until the rendering by the Supreme Court of Puerto Rico of the above mentioned final decision May 26, 1983.

^{1/}Juris Doctor, University of Puerto Rico, 1981; Lecum Magistry, University of Pennsylvania, 1982; Member of the Bar of the Commonwealth of Puerto Rico (1981), of the Bar of the US District Court for the District of Puerto Rico (1982), and of the Bar of the US Court of Appeals for the First Circuit (1983).

F. Provisions of Law Involved in the Case.

1. Constitution of the United States,
1st, 5th, and 14th Amendments.....J
2. 28 USC § 1258(2) and (3)J
3. 42 USC § 1983 and 1985(3).....J
4. Constitution of the Commonwealth
of Puerto Rico, Bill of Rights,
Article II, secs. 1, 4, 7, 8J
5. Rules of Civil Procedure of
Puerto Rico, Rules 1 and 36.3,
32 LPRA Ap. III, Rules 1 and
36.3 (1979).....J
6. Law of the University of Puerto
Rico, Law No. 1 of January 20, 1966,
as amended, 18 LPRA § 601 et seq.....J
7. General Regulations of the Univer-
sity of Puerto Rico, Article 11,
Certification number 114, 1980-81,
promulgated by the Council of Higher
Education of the University of Puerto
Rico January 16, 1981.....J
8. COMPLEMENTARY NORMS FOR PRO-
CESSING DEFERMENT OF THE OBLI-
GATORY RETIREMENT OF THE UNIVER-
SITY PERSONNEL, Certification
number 59, 1972-73, promulgated by
the Council of Higher Education of
the University of Puerto Rico
February 9, 1973.....J
9. 31 LPRA § 3371-3511.....J
10. Manresa y Navarro, Comentarios al
Código Civil Español (1967).....J
11. Puig Brutau, Fundamentos de Derecho
Civil (2nd ed., 1978).....J
12. Corbin, On Contracts (1953 ed.).....J

G. STATEMENT OF THE CASE

BACKGROUND (1) The appellant,^{1/} professor Ratimir Maximilian Pershe, born May 24, 1916, has been employed by the University of Puerto Rico^{2/} Law School since 1965, first as associate professor of Law and director of the Law Library. Then, in 1970, he was promoted upon evaluation of his performance in law classes^{3/} and unanimous recommendations of the Law Faculty Personnel Committee,^{4/} to full professor with tenure [F1 (J*515)]^{5/}. In 1979, he left his administrative duties to dedicate full time to law teaching and to research in the field of theory of law [F125(J638)]^{6/}. As of June 31, 1981, he was prevented by the appellees from continuing in his position of law teaching and research in a way that, according to the submitted evidence,^{6/} deprived

1/The appellant is a member of the New York State Bar and of the Bar of the US District Court for the District of Puerto Rico. 2/Abbreviated to UPR. 3/This evaluation means that the appellant was found, repeatedly, on the unannounced visits to his classes during several years, to have met the highest standards of communicating and transmitting the information, as scheduled by the curriculum, to all members of his classes with their full and articulated participation in discussion and in making questions [J512]. 4/Before this promotion, the Law Faculty verified the appellant's earned degree of Doctor of Law, University of Zagreb (1940); M.S.L.S., University of Columbia (1953); and LL.B., University of Fordham (1962), with the respective Universities. 5/The letters F and P with numbers refer to proofs and evidence submitted to the Courts below. The letter J with number refers to documentary proof or evidence in AP JUR STA. An asterisk following the letter J indicates that the document referred to is fully or in part in English. 6/This refers to the evidence submitted to the Courts below under the letters F and P, some of which is included here in AP JUR STA under the letter J. The proofs and evidence, submitted under F, P, and J, do not include all the evidence. The appellant reserved a large part of the evidence, if needed, for trial. Another part of the evidence is still in the unilateral possession of the appellees [access to which the Courts below denied to the appellant without reason, see P200-221, P195-196, P184-194, P181 (J203 [Jury])]. 7/The same evidence collected under the letters F and P does not include any of the numerous testimony offered and suppressed by the Courts below. Furthermore, the evidence offered in AP JUR STA is only a part of the evidence submitted to the Courts below under F and P. Nevertheless,

him of his federal rights and inflicted upon him great injuries, which will become irreparable unless he is reinstated into his previous position.

(2) His academic achievements, throughout the time of his employment, have been meritorious, whether in the classroom performance,^{1/} or in his research of fundamental problems of law which lead him to the development of the concept of the natural science of law,^{2/} in building up the law library collections and services,^{3/} in the institutional selfevaluations of the legal education and of the bar examination in Puerto Rico,^{4/} and in developing a program in 1979, for new special independent services in law libraries, by which all persons would have the right to receive information about their legal rights and about the situation of their cases in the hands of their attorneys or other judicial and administrative functionaries (this program was frustated by the fact that the President of the US, who promoted the legislation in Congress in favor of such programs, lost the election in 1980).^{5/}

the proofs and evidence submitted under AP JUR STA are by themselves sufficient to show that the violations of the federal rights of the appellant have been committed, are substantial, and require a Summary Judgment for the appellant.

1/Cf. F497-500 (J 709-712), F514-521 (J*720-727), F527-555 (J 728-756), F556-557 (J*757-758), F558-559(3) (J 759-762), F50-62 (J 563-575), F2-12 (J* 517-526), F125 (J 638).

2/Cf. P 206-208 (J 209-210), P43 675 (J 435), F942-976 (J*938-972), F29-48 (J*543-561), F49 (J 561), F73-123 (J*586-626), F124 (J 637), F127-129 (J 640-642), F130-144 (J*643-657), F145-146 (J 653-659), F147-444, F445-458 (J*660-677), F472-479 (J 678-696), F480-481 (J*697-698), F514-521 (J*720-727).

3/F977-1196 (J*977-1187). 4/F740-742 (J 586-588); the submission of the documentary proofs of the auto-evaluations, the depositions, and the expert testimony has been suppressed by the CHE denying a hearing to the appellant and by the Courts below denying to the appellant a day in court.

5/The submission of the documentary proofs and of the testimony concerning this program has been suppressed likewise, see the preceding footnote n.4, p.2, supra 7.

STUDENTS

(3) In his eighteen years as a law professor at the UPR Law School, the appellant has not only fulfilled loyally his duties in this substantial length of service, he also made a substantial academic contribution [cf. § (1) and (2), supra]. For instance, he has been very successful in communicating in his classes. This can be seen from all the evidence submitted to the Courts below by all the parties on the point of his communicating in classes, which is unanimously in favor of the appellant. He was repeatedly evaluated from 1965 to 1969, promoted in 1970, and reaffirmed in his law teaching in 1979 by the Chancellor [cf. F125 (J), and (1), specially its n.3 and 4, supra; F1 (J*); J]. In 1980, he was granted a sabbatical leave for the purpose of preparing his hypotheses of the natural science of human law to validate them in his law classes within the traditional curriculum [F517-518 (J*), F73-92 (J*), F130-140 (J*)]. On April 10, 1981, the then Dean of the Law School, appellee Dennis Martínez Irizarry, convoked a hearing in his office to receive testimony by the students about the appellant's performance in his Theory of Law class (this class being a large one of fifty senior students in the last semester of their third law school year).

(4) After the hearing had been held, the students that participated in it summarized their testimony (given, according to them, during more than one hour) in a document dated May 25, 1983, addressed to the Council of Higher Education. According to the said testimony of the students they wanted that high Council to know about the excellence of the teaching of Professor Pershe [F548-553 (J)]. The students who, according to their testimony, could not attend the hearing for reasons beyond their

control, sent in writing their enthusiastic approval of the performance of Professor Pershe in the classroom /F497-500 (J)_. The above mentioned testimony of the students, who expressed themselves in the said hearing, also represent the feeling of other students who could not participate in the hearing but expressed themselves about the class performance of Professor Pershe.^{1/} The following is a summary in English of what the students attested to in Spanish to have "sustained" in the above said hearing /F497-500 (J)_: "1. That the class about Theory of Law which Professor Pershe offers is one of the most important classes which the students of the Law School may have in all the years which they spent in the Law School."

(5) The reasons they "sustained," in support of the above quoted statement, are: "a." It is the only course in which the students are taught how to make an analysis of a case on its own facts and to apply analytic criteria, a process until then unknown to the students, apart from the application of written legal norms. "b. That this course introduces the law students to a field of

^{1/}There exists other independent evidence which the appellant submitted to the Courts below as testimony of the excellence of his performance in the classes, which also should have been considered by any fair administrative and judicial bodies, such as is individual written testimony of other appellant's law students /F532-537 (J), F546-547 (J)_; and such as is the testimony of the appellant's law students, offered by them in the preceding years about the class performance of Professor Pershe. Then, they offered this testimony for no other reasons than to express their profound recognition of the academic excellence of professor Pershe /for instance see the plaque at F60-62 (J)_. Besides, many law students of Professor Pershe offered oral testimony which was suppressed by the CHE and by the Courts below. It should be noted that the law students of Professor Pershe were not moved to take his classes just to get high grades, since, for instance, in his Theory of Law classes, he gave lower grades than those given in other sections by other professors, and still the number of students that enrolled in his classes was the largest of the sections. The submission of the testimony and of the documentary proofs concerning the comparison of the grading and the motivation of the students has been suppressed likewise.

law (the Natural Science of Human Law), previously completely unknown to them, which permits them to penetrate into the value of law in human interrelations. "c." The course is oriented to develop in the students all the capacities of an attorney at law to analyze a legal problem in any situation. "d." The course teaches: the would-be attorney at law not to refuse to give legal help only because there may seem to be no favorable solutions to a problem within the established legal norms, as there are other certain ways, facilitated by the Natural Science of Human Law, to propose a solution to a genuine problem. Also, the course teaches that the clients should be accepted for "jural reasons," besides economic interest.

(6) In the same letter, the students continue to attest to that which they "sustained" in the hearing as follows: "2." That Professor Pershe is one of the professors most dedicated to the students. He invites and receives them in his office and home whenever they need additional instruction at any hour any day of the week. "3." That Professor Pershe is one of the few professors that produces original work, such as is his Biophysical Theory of Law. He is a cultural and scientific asset to the Law School of the UPR of whom any other law school would be proud. "4." That there is practically no other professor in the Law Faculty of the UPR, besides Professor Pershe, who is prepared to teach this course. He dominates philosophy of law, antiquity of law, and modern problems of law. He applies this knowledge constantly to improve the competency of legal reasoning of his students, strengthening it with his findings from the Natural Science of Human Law. Professor Pershe constantly uses practical examples. It should

be emphasized "that Professor Pershe communicates more effectively in the classroom than some other professors of our faculty do." "5." The students in this hearing expressed, in the name of the class, their recommendation to the Dean and to the CHE that Professor Pershe should continue to form a part of the Faculty in order to give the students a unique opportunity to get enriched by the extraordinary benefits to be received from his teaching F548-553 (J).

PRACTITIONERS

(7) It appears clearly from the above testimony of the law students E (3)-(5), supra J that the appellant, Professor Pershe, has communicated effectively in his classes, that the students receive from the teaching of Professor Pershe extraordinary benefits which they do not get in any other class, and that there is practically no other professor who is adequately prepared to teach the courses which Professor Pershe teaches. That these students will not be disillusioned in their appreciation that they obtain from Professor Pershe the best kind of legal education, can be gathered from the additional evidence submitted or otherwise offered to the CHE and the lower Courts. This evidence contains the testimony of very successful practicing attorneys in Puerto Rico to the effect that one of the most important factors that shapes their professional capacities is the extraordinary benefit received from the teaching of Professor Pershe. For instance, the testimony of Jay A. García -Gregory, Esq., a young successful partner in one of the largest law firms of Puerto Rico, should be pointed out since it represents similar experiences of other practicing attorneys related to the teaching of Professor Pershe.^{1/}

^{1/}The testimony of some of such practicing attorneys is included here in AP JUR STA F545 (J), F554-559 (J). The giving of the oral testimony by many other attorneys has been offered and suppressed by the CHE denying a hearing to the appellant, and by the Courts below denying to the appellant a day in court. Also, the oral testimony of those attorneys who feel that they would testify only if

(8) In his testimony /F584-588 (J) 7.

Mr. García-Gregory mentions that he graduated from the UPR Law School in 1972, that thereafter was a part-time professor of legal research at Columbia University, and later was a clerk of the US District Court in San Juan for eight months, before he entered (in February 1974) the private practice in the San Juan law firm of Fiddler, González & Rodríguez. It is important also to mention that Mr. García-Gregory has been participating creatively in many activities of the legal profession. For instance, he has been an active member of the Bar examining Board and, due to his contributions to the improvements of the Bar Exam, many complaints against the Bar Exam disappeared. These complaints heretofore often had been seen and heard in the newsmedia. In his above referred to testimony, he expresses himself in Spanish (which the appellant summarizes in English) in the following way:

(9) I feel it necessary to express my personal opinion concerning the deferment of retirement of Dr. Pershe, whose student and professional colleague I have been for a long time. Recently, I had the opportunity to be present in the class of Professor Pershe on Legal Theory. I am convinced that he enjoys a very good health, that he is very active in his academic work, and that during the next five years he could exercise an extremely important function to improve the legal profession in Puerto Rico. Although all my time has been taken up in a very active practice and with professional commitments, I take it to be my foremost duty, which I owe to law teaching and to the legal profession in

summoned has been equally suppressed. They would not testify voluntarily because the suit is against functionaries of the government which they represent.

Puerto Rico, to emphasize the importance which Professor Pershe has had in my professional formation as an attorney-at-law [F538 (J)].

(10) I was a student of Dr. Pershe at the beginning of my legal studies in 1969, and in the last semester of my legal studies in 1972. On the first occasion, Dr. Pershe was my professor in the course of Legal Research and Method. "The exercises of analysis and synthesis, as well as the search for and rigorous identification of the facts and of authorities in resolving fact situations periodically supplied by Professor Pershe, achieved that gradually my fear from the unknown disappeared, and at the same time that my appreciation and enthusiasm awakened towards the utilization of law as an instrument for vindication of victims and for perpetuation of the values which support our present democratic society" [F539 ()]. In this course I acquired the habit to use the law library incessantly, which habit still gives me a foremost advantage in my practice.

(11) When the second semester of the third year arrived, I had the good fortune of having had Professor Pershe as mentor and guide in the course Theory of Law. There again, through continuous exercises and critical exchanges, I truly was able to consolidate my legal methodology to which I was initiated in the first year by Professor Pershe. I learned from Professor Pershe how to segregate rights and duties, privileges, liabilities, powers and immunities in all possible situations and transactions, including things, persons and values. Through this approach I was then confronted, just as I have been confronted many times since in my practice, with the discovery of the reason for the existence of certain juridical norms which I had to

decide whether to apply or not to the above-mentioned relations of facts. Still today, I find myself deeply obliged to Dr. Pershe for his basic methodology which enables me to discover the facts which give the winning margin to a victim [F540 (J)].

(12) "If the facts, he [Professor Pershe] would say, are not established in detail as a result of rigorous analysis of the presented proof to sustain a claim, the search for a statute or precedent is vitiated at its roots and may lead to an injustice and to progressive loss of the confidence in the adjudicative process. Unfortunately for their clients, too many attorneys rely upon a norm without any adequate connection to a specific fact situation. This too often seems to alleviate their problems. In such a situation, such attorneys forget that the primary function of law is to watch that everyone gets what is his or hers, and that justice be done to an individual in his personal and concrete interaction with those who are around him. Therefore, it is indispensable to examine all concrete circumstance which constitute a controversy in order to identify beforehand the involved rights and correlative duties, and to determine whether the norms exist and to what extent they can cover the situation or whether such a situation requires a new juridical pattern to cover the same specific situation" [F540 (J)].

(13) Allow me to demonstrate to you concretely how the methodology of Dr. Pershe became of great utility in my practice. I could not take the bar exam immediately after graduation, because I became an "Associate Law Professor" in the Faculty of Law of Columbia University in the City of New York. I was immediately able to teach the course of Legal Research to the first year law students

at Columbia University. After teaching for one semester at Columbia, I returned to San Juan and then only two weeks remained in which to prepare for the bar exam. I prepared myself during these two weeks with my friend, Eduardo Estrella, who is now one of my closest colleagues in the practice. We decided to use in the bar exam the methodology of Dr. Pershe. We reduced to basic schemes the components of each problem, which we analyzed in connection with the subject matters of bar exams from previous years. After we established the jural relations, we asked ourselves what was the basic reason for a norm to be applied in each case ∫F541 (J)_7.

(14) Having used the above mentioned method, I was able to confront peacefully the diverse situations of fact in the bar exam. "After the bar exam, my friend Estrella and I were able to confirm that the margin of our error in the assignment of juridical consequence to the presented facts was relatively very small. My experience thereafter, as a member of the Bar Examination Board, confirmed the validity of the method of analysis and of the basic respect for the facts which I received from the courses of Dr. Pershe. Let me also mention that during my term as Director of the Law Review of the University of Puerto Rico, Dr. Pershe was all the time a stimulating factor to my professional improvement. I am sure that this is true also of all those students and professionals who from time to time consult with him. I am convinced that the University of Puerto Rico, and above all, the Faculty of Law, would be deprived of a great opportunity of continuous and efficient juridical information for future attorneys if Dr. Pershe were to retire now" ∫F541 (J)_7.

(15) Mr. García concludes his testimony in the following way: "Each day the facts which nurture the law

in its continuous development are becoming more complex and require a greater effort to understand them and to deal with them adequately. The teaching of law must adopt as its basis a respect for the facts, such as they present themselves to us, not as we would like that they be presented to us. The client, who relies upon his attorney, has a right that his case be carefully analyzed and documented, synthesized and delimited, so that the nature of his claim could be properly identified. In this way we could avoid costly errors and frustrations of expectations which often occur due to the failure to identify with precision, before beginning to argue and make a corresponding opinion, the factual shapes of the rights, duties, immunities, liabilities, and privileges, which otherwise remain hidden in the case and its documents. In this sense, Dr. Pershe still has a lot to contribute to the formation of future juridical minds which could be of utility to our Puerto Rican community. It would be truly unfair to deprive of his work prematurely him who has demonstrated so much dedication to justice through long hours of effort. His incessant productivity deserves to be continued, stimulated, and compensated, and not to be cut off. To this I am ready to testify any time when it be desired" /F542 (J)_7.

(16) Mr. García-Gregory also turned to another attorney, Mr. Martínez-Muñoz, who was then a member of the CHE, in the hope that Mr. Martínez-Muñoz, as an attorney, could better appreciate the academic significance of giving a deferment of retirement to Professor Pershe. Mr. García-Gregory wrote in a letter to Mr. Martínez-Muñoz "that the CHE is obliged to give an opportunity to be heard to Dr. Pershe. This is why I am writing to you." Besides, also wrote Mr. García-Gregory to Mr. Martínez-Muñoz, if

Professor Pershe had to retire now this would result in a great injury to Professor Pershe and his wife.^{1/} Furthermore, Mr. García-Gregory wrote a letter to Dr. David M. Helfeld, who as Dean of the Law School hired Professor Pershe, and who, Mr. García-Gregory understood, knew well "the rare ability [Of Professor Pershe] to instill in his students a basic respect for facts. I have come to appreciate this basic commitment of Max [Professor Pershe] to the basic justice of simple facts." Mr. García-Gregory accompanied with his letter to Dr. Helfeld one of his briefs submitted to the US Court of Appeals for the First Circuit, to demonstrate the influence in his work of the method of Professor Pershe.^{2/}

TEACHING

(17) It is clear from the testimony of the practicing attorneys, which has been suppressed [cf. n. 1, §(7), p.6-7, supra], such as is the testimony of Jay A. García-Gregory, Esq. [cf. ¶(8)-(16), supra], that these attorneys consider Professor Pershe to be a law teacher of extraordinary importance to the legal education of the attorneys in Puerto Rico. According to the same testimony, not only that the appellant has communicated effectively to the law students, but also that the influence of his commu-

^{1/}As will be seen further in the facts [§() and ff., infra], Mr. Martínez-Muñoz could not do anything because the decision to remove Professor Pershe was a political one (not an academic one as it should have been) commanded by the highest executive authorities of the Commonwealth of Puerto Rico [Pl37 §60 ()].
^{2/}It will be seen further in the facts [§() and ff., infra] that Dr. Helfeld was unable to achieve anything which he was asked to do by Mr. García-Gregory in the said letter. Apparently, Dr. Helfeld, who has occupied a high position in the executive branch as President of the Governor's Labor Policy Council, was prevented to intervene because of political reasons.

nication actually created a legal "blue print" for the practicing attorneys from which they were able to perform "law jobs" competently. This testimony also indicates that this "blue print" also was a contributing factor to a substantial improvement of the Bar Exam in Puerto Rico. This testimony highlights the fact that the excellent teaching of Professor Pershe has been the result of his research in the field of the Biophysical Theory of Law (BPLT), especially of the Natural Science of Human Law (HLNS), which he founded.^{1/} If one compares the teaching of Professor Pershe as indicated by his present and past students [cf. §(4)-(16), p.4-13, supra] and the summary of his development of the concept of the Natural Science of Human Law [J], one will notice that his theory represents a natural scientific foundation for law practice and law teaching.

HLNS

(18) However, the appellees and the Courts below, beyond having suppressed the above described testimony, given by the students and the practitioners about the development of the said concept [§(3)-(17), p.3-14, supra], also suppressed the development of the said concept itself.

^{1/}Some of the above said research resulted in his developing practical tools which became an extraordinary help for students and practitioners, as they attested to. For instance, his "Strategic Brief" requires a practicing attorney to assemble around the four constant variables of law (Action, Facts, Controversy-Rule, and Situation Sense) all the obtaining states of affairs of a case, and to compress the resulting four variables into a "close-up" of one letter-size page, regardless of the size of the case. In addition, the appellant constructed exams to validate his law hypotheses within the traditional research and legal method adopted by the Law School Faculty on October 11, 1977. These tools [for a sample see J] were offered in evidence and were suppressed by the CHE denying a hearing to the appellant and by the Courts below denying to the appellant a day in Court. (J*), F536-544 (J), and F556-557 (J*)_.

[c.f. §(20) and ff., infra] This development is summarized at J ; and is outlined as follows: The physical observation of how a normal Court feels to be required to resolve a case, in order to reestablish an unjustly injured victim into its previous position, indicates that there is a "specific" (law-bound) "requiredness" which could be recognized in the many varieties in which it appears. For instance, the history of law indicates ^{1/} that a factual situation of unjust injury has always been required to be fully recognized before a norm could be considered for its application. ^{2/} The historical precedent of the practice of law in Sumer, twelve thousand years ago, indicate that the force of law rests not in the state but in the "specific (law-bound) requiredness" that there be a "specific (law-bound) togetherness (the factual situation)" and in the execution of that which such "togetherness" requires." A ^{3/} thesis of the BPLT is that Natural Selection developed a basic unit of the function of law in the humanoid brain. This function of law is not performed competently unless it succeeds, among all participating and interfering forces, to establish the force of law in a case according to the said "requiredness."

1/ R.M. Pershe, LA TEORIA DE DERECHO, mimeografiado, Escuela de Derecho de la Universidad de Puerto Rico, 1967-81, 400p.,

2/ "Traditionally, one is accustomed to think that we must have some wrong which violated a law before we can apply a law. (Answer) According to the BPLT, this is inadequate thinking to present the function of law. More specific and therefore accurate thinking is that we need an injury to a person, not violation of any law necessarily, and that this concrete injury be unjust to a person or to a group, not to their societal substitutes. When we do have something which is unjust injury, we have the function of law, which we may call a norm, but this function is not law on the books, no a norm on the books. The law on the books may be the part of the factual situation which describes the unjust injury, which is the condition for the function of law." idem.

3/ BPLT or Biophysical Law Theory is mentioned in §(17), supra, and discussed in Summary (J).

(19) A formula has to be designed to bring about detection and recognition of the "specific" biophysical characteristic of law of the said basic unit. The designing of this formula has been suppressed by the appellees and the Courts below. To design this formula, the appellant was constructing law acquisition models in his law classes within the traditional curriculum [cf. §(17), p. 13-14, infra 7]. He was validating the relevant hypotheses by the results of his tests, which he administered as an inobtrusive part of the regular traditional exercises and tests in his law classes. To help to construct the said model of acquisition of law, the appellant was also developing in his law classes in a similar way a "specific competence" model and a "law performance" model. These models are to help to determine what forces made law performance deficient and why, according to the "law competence" model. The development of these models has also been suppressed by the appellees and by the Courts below. The development of the concept of the Natural Science of Human Law, through such models and the formula, would lead to the recognition that law is not a second order question, which the present legal system answers to the effect that any law, and any legal system, is better than none, however outrageously deficient it may be.

(20) The development of the concept of the Natural Science of Human Law forms a basis for the recognition that law is the first order question. The BPLT answers this question with its thesis that "performance" of law must be "fit" in an evolutionary sense. This "fitness" of law is tested by its competence to maintain the stability of "unbounded unsettleness," a biophysical entity of which the percept is "freedom" by resolving finitely "specific" (existential) conflicts.

^{1/}
1/For an analysis of these statements see Summary, p.7-15

(J)).

Finally, this fitness also depends upon the final question of whether law is sufficiently fit to furnish "raw materials" for Natural Selection to increase the frequency of law and thus to cause an increase in freedom. To indicate how this development of the said concept could contribute already at this stage to a better understanding of the "biophysical" forces which, until now undetected, have been shaping the Constitutional Law of the United States, some US Supreme Court cases are to be examined as an example of one of the best existing performances of law. To demonstrate how the development of this idea would influence other jurisdictions world-wide, it is demonstrated how an early recognition of the same idea would have prevented the enactment or the enforcement of the Nuremberg Laws, 1935, and the execution of the ensuing Hitlerian genocide order. [For other important points of the development of the idea of the HLNS see the Summary at J 7].

(21) The development of the natural scientific concept by the appellant was made possible by the Faculty of Law, especially by its then Dean Dr. David M. Helfeld, and by the Committee for Materialization and Evaluation of Projects (the Office for Coordination of Study and Research) at the Río Piedras Campus of the UPR, especially by the then Deaness of Studies Dr. Leticia del Rosario, a well known Puerto Rican physicist. The decision in favor of the development of this idea was based on the submission of the proposal F942-976 (J*) to find out whether a fundamental study had ever been made in the worldwide literature about the natural scientific nature of law. In 1973, when Dr. Thoday, Head of the Genetic Institute, University of Cambridge, England, approved of the appellant's idea having indicated that this idea of the natural science of human law was feasible, the above mentioned Deans of the

(37) According to the above mentioned commentary of Manresa y Navarro in §(36), supra, the Puerto Rican contract law, specially 31 LPRA § 3375, requires performance, which is not only that the appellant teaches and the UPR pays a salary, but also which includes all the consequences derived in good faith and in law. Such a good faith consequence is the assimilation of customs. That this custom includes the custom of the UPR to grant all the law professors the deferment of retirement, except if there is a cause not to do so, can be gathered from the description of such a custom. The practice of the UPR to grant to its law professors deferment has been so firm and continuous, through many decades, that it has been completely unnecessary to place it into the contractual context (thus meaning that the parties do not even have to talk about it at the time of making the contract). Normally, the deferment is an accessory matter of the employment of a law professor at the UPR which had been agreed upon and which without question will be performed. Thus, there is no doubt that according to the Puerto Rican contractual law the appellant has the property right to the implied contract as confirmed by Manresa y Navarro. This is why the Courts below never denied that the appellant has the said property right to the implied contract.

(38) According to 31 LPRA § 3372, the contracting parties can make clauses and conditions which they consider convenient to them, if such clauses are not contrary to the law, to the morals, not to the public order [cf. P286-289 (J)]. Thus, according to this section, the clause of implied tenure of the appellant is valid unless it violates a law. This clause does not violate any law. The practice of the UPR to grant to the professors of

Law School and of Studies, supported the development of this idea not only because this development had been a serious scientific investigation, but also because they became aware of the fact that this development has been of substantial importance [F78-92 (J)]. On the basis of the above mentioned proposal [cf. §(21), p.17, supra], the appellant was granted a sabbatical leave for 1972/73, which he spent at Cambridge University, England, and at the University in Munich, Germany. He found out that there has never been done any fundamental study about the natural scientific nature of law. As a result of his investigations in Europe, he then changed his project from "Natural scientific investigation into physical elements of law" to "Investigation into biophysical elements of law." This latter investigation was found feasible in Cambridge, as mentioned above. This very successful sabbatical leave ended up with a program which the appellant proposed for creating natural scientific models of human law [cf. F78-92 (J*)]. The outline of this idea, as far as it was developed by 1981 [cf. §(18)-(20), p.15-16, supra], indicates that, if the appellant had not been deprived of the opportunity to conclude the said development of his idea, the idea could have been published already and could have thrown new substantial light on our understanding of human law.

ADVERSITIES

(22) However, in 1973, when the appellant returned to the UPR, its administration was radically changed, down from the President and from the Chancellor to the Law School Dean. This change turned out to be adverse to the natural scientific project of the appellant in the field of theory of law. The practical philosophy of this new administration was that there was an economic crisis which did not allow for the "luxury" of making fundamental

investigations and for building library collections, that all courses could be taught from one book, and that the legal education should not be encouraged since the legal profession can be only parasitic.^{1/} Even the then Dean of the Law School considered that the legal teaching should not be burdened with the facts of the cases and that "los resúmenes de casos" ("can briefs") instead of factual analyses, should be used in legal instruction.^{2/}

(23) The new UPR administration proposed in 1974 that the autonomous administrations of the different faculties and institutions be centralized. As a result, the Law School Library would have been centralized with the General Library and the Law School with the School of Social Sciences. The members of the Law School faculty opposed this centralization, and upon their pressure, the Dean named Professor Pershe to prepare the faculty's defense against the centralization. As a consequence, the appellant, instead, on working on his scientific project, was obliged to spend all his time (beyond his teaching time) on the preparation of the said defense, which involved making an extensive and profound evaluation of all Law School Library operations and collections. In order to demonstrate that the proposal of the new administration to reduce the said Law School Library into a reading room was untenable, he proved that almost all the academic programs of the Law School

^{1/}The testimony as to this practical philosophy has been suppressed by the appellees and by the Courts below.^{2/} For example, the then Dean stated his policy as follows: "I propose... the idea that... law teaching... should depend on the doctrinal textbooks, on the can briefs, and on the student's study groups..." See the speech of the then Dean given at the "First Conference on the Puerto Rican Law Teaching" on the 22 of April 1977, 1977-78 Interamerican Univ. L. Rev. 787-794, at 790

would have had to be eliminated if such a reduction had been allowed [F977-1075 (J*)]. After the faculty thus demonstrated to the new administration that the reduction of the Law School Library would mean a deterioration of the legal education in Puerto Rico, the new administration decided not to reduce the Law School Library but instead to centralize it with the General Library.

(24) The above took place from 1974 to 1975. The fight of the Law Faculty against the said centralization took another two years thereafter. The appellant was able to demonstrate to the said new administration of the UPR that the operation of the Law School Library under the proposed central administration would cost four times as much than if the Law School Library were to remain autonomous; that the UPR should even be more decentralized; that the advantage of a centralization should be achieved by introducing an "inter-comm" computarization; that the UPR at that time had on its payroll twelve employment positions which did not exist in fact, and, that if it were to be keen at economizing, it should abolish these employment positions [F1076-1196 (J*)]. After 1977, such special assignments of Professor Pershe continued until 1979, when the said "new" administration (which was in power from 1974 to 1978) was replaced. These assignments, such as that to deal with a strike of the Law School Library employees, were effective in keeping Professor Pershe away from the work necessary to conclude his said project on the natural science of human law.

PROJECT

(25) In spite of the extremely adverse conditions to the development of the concept of the natural science of human law by the appellant under the said "new" administration, the appellant nevertheless succeeded in continuing to develop his project in his law classes within the traditional curriculum, in which effort he received an enthusiastic response from the students and the practitioners. This could not substitute the need for a full devotion to the conclusion of the project, but helped to validate some hypotheses, which could serve for preparing the natural scientific tests which would help to discover the presence of a biophysical human law. For instance, these validations of his hypotheses in his law classes enabled him to obtain the consent of the Mexican government, in 1975, to his making tests in the jungles of Mexico^{1/} and later on, in 1979, to persuade another UPR administration to enable him to resume the work on his project by granting him a new sabbatical leave for this purpose.

(26) In addition to working in the development of the concept of the natural science of human law in his law classes, the appellant worked in his project also during his vacations. For instance, as a part of such work he participated in teaching in CIDOC, "Centro Intercultural de Documentación", Cuernavaca, Mexico, on the "Practice of law suppression" [cf. F46-48 (J*)]. He used this opportunity to get cooperation for his project from the Mexican anthropologists Demetrio Sodi and Dr. Salomón Nahmud Setton, Director del Instituto Nacional Indigenista. They would help to transpose the tests of the appellant into the

^{1/}See §(26), p.21-22, infra.

equivalent of the still culturally intact indians in several Mexican jungles, Seri, Lacondón, Huichol, Cora, Tepehuana - y Mixe. The Instituto Nacional Indigenista of the Mexican government would cover the costs of the airplane trips to the seven jungles where the above mentioned different tribes live, and the cost of the facilities needed to administer the tests. Nonetheless, the UPR would have to contribute \$5,000 for other yet uncovered necessary costs [cf. F29-45 (J*)_7].

(27) However, although the Committee for Materialization and Evaluation of Projects of the Río Piedras Campus of the UPR agreed to provide such a contribution, it was never materialized because the then Dean of the Law School refused to approve it finally, ^{1/}probably due to his own policy [cf. n.2, §(22), p. 19, supra _7] and to the above mentioned policy of the "new" administration [cf. §(22), p. 18 19, supra _7]. ^{2/}The said "new" administration, in its reign from 1974 to 1978, made it impossible for the appellant to continue systematically on his work on the said project, which would have enabled him to produce a preliminary paper, by assigning him the above mentioned absorbing special administrative tasks _____

^{1/} With the above mentioned refusal the appellant's investigation was ended since no time beyond his vacation was allotted to him to look for further funding in the US for his said investigation in Mexico. ^{2/} The testimony suppressed by the appellees and by the Courts below would have shown that the said Dean and the said "new" administration tried to suppress the appellant's project and tried to eliminate from the Law School curriculum the law classes that the appellant was teaching. The same testimony would have also shown that this attitude on the part of the said Dean and the said "new" administration was due to the fact that the appellant taught that the respect for the facts is of a paramount importance in the legal education, whereas the said Dean wanted to substitute factual analyses for "can briefs."

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and by denying him any funds needed for his project. In 1979, the said Committee for Materialization and Evaluation of Projects persuaded the then incoming Chancellor of the Río Piedras Campus to grant to the appellant another sabbatical leave in 1980 so that he may have resumed the work on his Project with the plan to produce a preliminary paper by April 1981 /F73-123 (J*)/. By the end of 1980, Professor Pershe had already a draft of eight chapters in preparation of the said preliminary paper which had been planned to be submitted to the Chancellor in April 1981. These chapters had to be integrated yet and the preliminary paper could have been completed by April 1981, if this was not prevented and suppressed surreptitiously by the then Dean, appellee^{1/} Dennis Martínez Irizarry.

NORMS

(28) The above mentioned suppression contradicted the express and implied terms and conditions of the contract of employment of the appellant with the UPR. Generally, the said contract of employment includes the following terms and conditions: First: That^{The} appellant was granted tenure in his employment by disposition of the General Regulations of the UPR when he became full professor in 1970. Second: That when the appellant reaches the retirement age of 65 (which he reached on May 24, 1981,) the NORMS^{2/} and the practice of deferment under the NORMS would be applied to him. Third: That the initial premise /NORMS, p.2,

1/ For a detailed exposition of this see R.M. Pershe, Declaración Jurada Sobre la Supresión de la Investigación el 16 de enero de 1981 (Affidavit concerning the suppression of the appellant's Project on January 16, 1981) /F445-458 (J)/; and also see g()p. , and ff., infra.
2/ COMPLEMENTARY NORMS FOR PROCESSING DEFERMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL, Certification Number 59, 1972-73, promulgated by the Council of Higher Education of the University of Puerto Rico February 9, 1973 /P270-276, (J)/.

—§(2), line 1 of the said NORMS is that "the retirement of a member of the UPR personnel could be deferred after he reaches 65 years of age" [NORMS, p.2, §(1), lines 6 and 7]. Initially, if one does not ask for deferment one will be retired. Fourth: The interested persons have: "the right to decide whether they want to request the Deferment of Retirement" [NORMS, p.2, §(3), lines 1 and 2]. This is a right to have the NORMS applied to a petitioner of deferment, not a dispensation or exemption from a law.

(29) Fifth: "The interested persons will have the responsibility to formulate said petition within the terms and conditions indicated in the above reproduced dispositions ~~[the initial premise]~~ and in these NORMS, which will be of application to all the university personnel..." [NORMS, p.2, §(3), lines 4-7]. The "above reproduced dispositions" (the initial premise and the right to decide whether to request deferment) were already dealt with here above in the previous paragraph Third and Fourth. So far as the "terms and conditions" refer to the further dispositions of these NORMS which deal with the formulation of the petition for deferment, they refer to rules ONE and TWO at page 4 of the NORMS. These NORMS, "which will be applied to all University personnel" [NORMS, p.2, §(3)], describe in detail the formulation of the petition in rule TWO of their page 4. Sixth: According to the rule TWO, page 4, the "interested" persons are to fill in their petition "from February 15 to 28." Seventh: According to the rule ONE page 4, this they are supposed to do only after the "Personnel Office" has determined "from February 1 to 14" who is subject to retirement, has "notified the interested persons" in Deferment ("by conduct of the respective Schools"), has advised the interested persons of "their right to request the Deferment,"

and has provided these persons with "a set of forms" published by the Central Administration [NORMS, p.4, rule ONE 7]. The NORMS, by express rules [p.4, rules ONE and TWO 7] assign the responsibility of formulating a petition to him who is the "interested" person in obtaining the deferment. This responsibility is created only after such a petitioner has received from the Personnel Office a notice, addressed to him personally, "by conduct of the respective School", that he is subject to retirement, that he has the right to ask for deferment, and that for these purpose he has to fill in the form addressed to him and return it to the Personnel Office, according to rule TWO of page 4 of the NORMS.

(30) Eighth: The NORMS expressly determine that they are the only ones which apply to a petition for deferment, that they do not apply to "services contract" after retirement, and that neither the "service contract" regulation apply to a petition for deferment [NORMS, p.2, §(3), lines 7 and 8 7]. Ninth: Rule ONE at page 3 of the NORMS determines, "About the Right to Deferment and its Obligations," that the "superior functionaries of the petitioner" have the "obligation" "to report favorably or unfavorably on the Petition of Deferment, being allowed to formulate the observations which they consider correct, to the effect that the CHE be enabled to resolve finally what it considers to be adequate". The structure of this rule ONE of page 3 of the NORMS clearly indicates that the right of the petitioner of deferment is based on the duty of the "superior functionaries" to report and on the invitation "to formulate the observation which they consider correct." Besides, according to the same page 3, the right to deferment is based on the prohibition imposed upon the CHE to resolve finally before they have received the reports

and the correct observations, if there are any.

(31) According to the above said structure of the rule ONE of page 3 of the NORMS, there exists a right to due procedure of deferment under the same NORMS. "The Right to Deferment" is the right to a competent performance upon the position for deferment, as expressly set up by the said rule ONE page 3. "Its Obligations" have no meaning if they refer to the obligations of the right. These obligations have meaning only in connection with the due process of deferment, which is the right to deferment. Not only the structure of said rule ONE, but also the title to section "II" of the NORMS (the central one of the three sections): "About the Right To Deferment and its Obligations", confirm that the most important part (of the central premise) of the NORMS is to establish the due process of deferment [NORMS, p.3, 7] which shall be applied to all UPR personnel [NORMS, p.2, §(3) 7]. Eighth: Rule THREE of page 3 of the NORMS establish that deferment of retirement is a continuation of the employment and not a new service contract. Ninth: The NORMS apply to the petitioner until his petition is finally approved or disapproved.

(32) Historically, these NORMS...FOR...DEFERMENT are one of the most important products in Puerto Rico of the wave of resurrection of the due process of law in the field of civil rights in state universities, which emerged during the decades between 1950 and 1980, specially in the enactments of 1957, 1964 and 1972, in the US. This product was consecrated in the NORMS... Certification Number 59, 1972-73, of the Council of Higher Education of the Commonwealth of Puerto Rico [See n.2, §(28), p.23, supra 7]. Other related products of the same wave, which served as one of the movements for established deferment, has been the installation of the duty of the University of Puerto

Rico to protect the exercise of "liberty of professorship and research," and the relative right of the students that this liberty be protected for the benefit of the students, Art. 11 of the General Regulation of the University of Puerto Rico (1981) [F1204-1205 (J)]. The above mentioned due process of deferment [§(28-32), p.23-27, supra] was established by this wave in order to prevent the capricious removal of the professors whose scientific work is disliked by some new incoming powerful administrator. Thus, for the best interests of the students and of the academic freedom of professors, these NORMS also made sure that a professor, who decided to stay after the retirement age, and the students, who desired him to ^{do so} ~~to~~ ^{re} ~~due~~ the benefits they had been receiving from him, get the due procedure of deferment.

(33) This wave of civil rights is also a part of a genuine Puerto Rican movement out of which came the Commonwealth of Puerto Rico. Some of the members of the Constitutional Convention of 1952 happened to be at the same time the most important leaders of the University of Puerto Rico. They made a special effort to eliminate any trace of fascism in the state university. They tried to prevent the occurrence of official behavior which would be prejudicial to civil rights. They expressly included in the Constitution of the Commonwealth of Puerto Rico (1952) a provision ordering the system of public education, which includes the UPR, to embody the practice of civil rights [P.R. Const. Art. II, sec. 1, p277 (J)]. The only rational reason for the constitutional obligation of the University to practice civil rights is to educate practicing civil rights. The best way to achieve this is to have the public functionaries entrusted with public education to teach Civil Rights by their practice. Just in the same

— way, the only rational reason for the promulgation of the COMPLEMENTARY NORMS FOR PROCESSING DEFERMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL [P270-276 (J)] has been that the "deferment procedure" [see §(28), p.23, supra] prevents arbitrary dismissal of meritorious professors who at their retirement age are making important "innovating" contributions to the education of their students [see Art. 11.4 of the General Regulation of UPR at J].^{1/}

CONTRACT

(34) Although the tenor of Art. 11.4 of the said Regulation of the UPR is that innovative professors are desirable [as is Professor Pershe as demonstrated by his work (J), and as his students testify to , §(3)-(18), supra], the UPR in addition developed a more liberal general policy of granting the deferment to the professors who were not innovators but who would qualify as capable, healthy, of some length of service, and meritorious. Beyond this general policy of the UPR, the UPR maintains a special policy in its Law School, which it has enforced without exception since the enactment of deferment procedures in 1950.^{2/} to the effect that a law professor has never been denied a deferment.^{4/} Thus, when Professor Pershe became a Full Professor in 1970, he did not acquire only the right to tenure, but also a right to implied tenure, to be removed only for cause, after he has arrived at the retirement age. Accord-

^{1/}The argument about the reason for those NORM being unique rational reasons is also supported by the history. The norms about deferment were for the first time introduced in the UPR in 1950. [Reglamento Universitario, Cap. III, sec. 5 and the Resolution of the CHE, Art. 5, sec.14, of November 28, 1950, both of which established the retirement system at the UPR]. They were reshaped in 1973 into the form they have today. Although their content is practically the same, the NORMS of 1973 reduced the space provided for the regulation of retirement to practically one page, and the rest of six pages were devoted exclusively to the due procedure of deferment. This change is conferred also by the change in the title from the Regulation of Retirement in 1950 to ...NORMS FOR PROCESSING DEFERMENT...

ding to the law of contracts in Puerto Rico, this-right is an implied property right. It is a de facto tenure. The removal for cause has to be established in a due process of deferment, before he can be removed. It is "the usage" which constitutes a contractual right as much acquired or vested as it was when the appellant still had a right to de jure tenure. ^{4/}

(35) In the case of the appellant, when his contract of employment was made in 1965, the UPR consented not to remove Professor Pershe or deny him a deferment except for cause. This consent was the consequence of Professor Pershe's good faith towards the UPR, by which he gave up all his valuable rights in New York to devote all his abilities to the UPR. On the side of the UPR, this consent was the consequence of the UPR's knowing and express and implied promise that it would treat Professor Pershe ^{The same} as any other professor of law and recognize also his property right to the implied tenure Compare 31 LPRA § 3375 (CC of PR) in n.2, §(33), p.27-28 supra 7. Furthermore, at that time of making the contract, Professor Pershe ^d and the UPR, knew that this contract about "implied tenure" is a service contract which is like a tenure contract, not contrary to 2/See n. 1, §(33), p.27-28, supra 7. 3/The submission of the testimony to the effect that no law professor has ever been denied a deferment, has been suppressed by the CHE, denying a hearing to the appellant, and by the Courts below, denying to the appellant a day in court. 4/The civil Code of Puerto Rico), 31 LPRA §3375, provides that "to have a contract you need only a consent. This consent includes all express agreements, as well as all consequences, which according to their nature correspond to good faith, to the usage, and to the law" P281 (J) 7. 31 LPRA § 3421 (the Civil Code provides that "all things which are not outside of commerce, even the future ones, can be the object of a contract. Equally all the services, which are not contrary to good customs, could be the object of a contract" P282-283 (J) 7. 31 LPRA § 3477 (the Civil Code) provides that "the uses and the custom of the land shall be taken into account in the interpretation of the ambiguities of the contracts, supplying in these the omission of the clauses which ordinarily are established " P284 (J) 7.

good customs. "Implied tenure" can be the object of a contract just as is "express tenure" [compare 31 LPRA § 3421 (CC of PR), in n.2, §(33), p.27-28, supra 7]. Moreover, at the time of making the contract, Professor Pershe and the UPR, consciously supplied the clause that ordinary has been established between the UPR and all other Law Professors [compare 31 LPRA § 3477 (CC of PR), n.2, §(33), p.27-28, supra 7].

(36) This Puerto Rico contract law, 31 LPRA § 3375 and 3421, which institutes the "implied tenure" of the appellant, has been confirmed unanimously by the Civil Code commentarists in a way which clearly establishes the property right to the "implied tenure" of Professor Pershe, created by said contract between him and the UPR. One of the most expert of said commentarists deals with 31 LPRA § 3375, which corresponds to an Article of the Civil Code, as follows: This 31 LPRA § 3375, "which requires performance, not only of the expressly agreed to, but also of all the consequences which are derived, in good faith and in law, from the usage to which the interpretive rule seems to joins that which is called "custom of the land". Looked at closely, it is a norm which, more than ^{the} exegesis of the contract, tends to contemplate it extended to all that which by being an observed practice, reiterated and admitted, is believed to be unnecessary to place expressly into the contractual text, being usually, accessory matter and of a merely performatory nature of what has been agreed upon," 6,2 Manresa y Navarro, Comentarios al Código Civil Español 440, lines 7-17 (1967) (commenting the equivalent to 31 LPRA sec. 3375), cf. P285 (J). [Manresa y Navarro being recognized by all courts in Puerto Rico as the most authoritative interpreter of the Civil Code of Puerto Rico 7].

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law the deferment, whenever there has been no cause to deny it, is the "usage" which does not violate the said NORMS - or any other law. The "superior functionaries" and the CHE operate under the above mentioned rule ONE, p.3, of the said NORMS as they have been operating every year [cf. § (30)-(31), p.25-26, supra 7], since 1973 when the NORMS were promulgated. The practice of the UPR, since 1951 (the year when the regulation of deferment was established), has been to grant deferment to all law professors. This practice established also that the said "superior functionaries" and the CHE could deny deferment to a law professor only for cause under the said NORMS. The appellees were in the full knowledge^f of this operation of the NORMS, applying to law professors the criteria of denial of deferment for cause. Without the knowledge^o of the application of this criteria they could not have, intentionally and in conspiracy, intentionally defrauded the members of the CHE by giving them secretly^e maliciously false causes for removal of Professor Pershe, with the intention of depriving him of his right to be removed only for cause [for testimony see §(), and ff., infra 7].

(39) This Puerto Rican contract law constitutes the fact that neither CHE nor the appellant violated the said NORMS when they made a clause impliedly that the UPR will not remove the appellant by denying him deferment, except for cause [cf. 31 LPRA § 3372, in P286- The case law considering the above mentioned section reduces its 289 (J) 7.] ~~The~~ application only to the clause which would require something which is forbidden by a law or rule, Boroes v. Registrador, 91 D.P.R. 112 (1964). The implied clause in the contract of the appellant and the UPR does not change anything which would be forbidden by the NORMS. It only specifies that in the case of Law Professors, the reports of the "superior functionaries"

refine the criteria, from being "correct," to the increased requirement that a disfavorable recommendation as to deferment be "for cause". By the said clause "for cause", the NORMS were not abrogated. The term "correct" ("atinente")^{1/} in rule One at p.3 of the said NORMS is not changed but rather is refined. For a disfavorable recommendation to be "correct", it must be, in the case of law professors, "for cause". All of the Civil Code commentarists agree with this interpretation, as Manresa y Navarro confirm when he refers to 31 LPRA § 3372.

(40) The said NORMS (rule ONE, p.3) by requiring the "superior functionaries" to make "correct" reports [cf. §(39), supra], do not require them to any particular type of "correctness" beyond telling the truth [cf. n.1, §(39), supra]. The criteria of denying deferment to a Law Professor "for cause" is to refine the said term of making a "correct" report, required to be made by the "superior functionaries". This refining does not change in any way the concept of "correct" ("atinente") in the said rule ONE. The NORMS do not forbid any such change. Any such change would be in conformance with these NORMS, since it would not reduce the function of these NORMS in any way, but it would enhance it [cf. §(28-31), p.23-26, supra]. Since the NORMS do not forbid such a change,

1/The word used in Spanish in rule ONE, p.3 of the NORM is "atinente" which the appellant translate into "correct". In Spanish the word "atinente" excludes any possibility that the reports be intentionally false or fraudulent. "ATINENTE" pertinent (pertinente), to find that which one searches with prudence (encontrar lo que se busca a tienta), to tell the truth (acentar), (afirmar con la solución)," Pequeño Larousse Ilustrado 109 (1964).

it being only "accessory matter and of merely performatory nature of what has been agreed upon" Manresa y Navarro, see §(36), supra 7, if an addition of the criteria "for cause" to be used as a part of the concept of "correct" in the NORMS is a change, then the NORMS not only permit such a change but also invite it for the benefit of the UPR and for the furtherance of the objective of the NORMS to protect the due process of deferment.

(41) The question of applying to the Law Professors the criteria of denial of deferment only "for cause", and not only for "correctness", is not only recognized by the practice of the UPR as an indispensable measure for getting the desired competent law professors, but also is a valid "accessory matter" according to Puerto Rican contract law, as it does not violate any law, morals or the public order, 31 LPRA § 3372. According to the US Constitutional law, this practice is the rational criteria of the said NORMS, which does not create any illegal discrimination. Thus, these criteria "for cause" do not violate in any way the NORMS. The Manresa y Navarro and the Puerto Rican contract law do not violate the US Constitutional prohibition against irrational discrimination, can also be gathered from the contractual principle facio ut des (I will do it, but you will fully compensate me for doing it). In other words, the appellant agreed with the UPR that he would serve the UPR if it gave him what it would give to others similarly situated to him Manresa y Navarro, 1967, p.399 7. ^{1/} The Puerto Rican contractual law, also points to

^{1/}"The contract exists from the consent of one of more persons to obligate themselves with respect to other or others, to give something or to give some service." 31 LPRA § 3371, P286 (J).

another way of testing whether a contractual clause violates or does not violate the law, in this case the NORMS. For instance of the NORMS ^{which} do not deal with appellants, the UPR can make agreements about the usage of the NORMS. Thus the "implied clause" in the agreement between the appellant and the UPR is not affected by the NORMS. Thus the UPR violated the contractual law of Puerto Rico (31 LPFA § 3371, cf. n.1 of this paragraph) also because the NORMS do not declare anything about the agreements.

(42) According to 31 LPRA § 3372, no contract or clause can violate the NORMS, if they do not contradict the content of the NORMS Manresa y Navarro, 1967, p.388. Certainly, to deny deferment "for cause" does not contradict the NORMS, which merely require that such a denial must be based on a truthful report "atinente", cf. §(39), n.1, p.24, supra. In conclusion, there is not doubt whatsoever that the clause in the employment contract between the appellant and the UPR to the effect that the appellant will not be denied deferment except "for cause" is both consistent and required by the Puerto Rican law of contracts. This statement is unanimously supported by all authoritative commentaries of the Puerto Rican contractual law Cf. § (34-41), p.29-36, supra.

CLAUSES

(43) After having ascertained the nature of the employment contract between the appellant and the UPR, according to the said NORMS and according to the law of contract of Puerto Rico Cf. § (34)-(42), p.29-37, supra, it is important to mention also the clauses of the said employment contract. These clauses are what is usually known as "implied" clauses or agreements declarations, since they are not written into the text of the contract Cf. n.3 §(34)-(35), p.29-30, supra. Both, according to the Anglo-American Law and to Puerto Rican Law, such "implied"

clauses, or agreements, are also express clauses, or agreements found by the process of interpretation $\sqrt{3}$ Corbin, On Contracts, 163-171 (1953 ed.) $\sqrt{7}$, because the interest of one who has relied on the ("implied") declaration, made in such a way, will be protected. In this way, the difference is established between the theory of the will and the theory of the declaration, "II, I. Puig Brutaw, Fundamentos de Derecho Civil, 65)2nd ed., 1978).

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The following are the clauses of the employment contract between the appellant and the UPR, which are not written into the text of the contract, but nevertheless are express clauses according to the above mentioned authorities, Corbin and Puig Brutau. Manresa coincides with their view For a discussion of the Puerto Rican contract law with regard to this point, as interpreted by Manresa, see §(34)-(42), p.29-37, supra 7.

(44) The above mentioned clauses include the following: 1. Tenure until the age of 70;^{1/} 2. Applying to the appellant the NORMS on an equal basis as to other professors of law; 3. ~~Applying to the appellant the NORMS~~ as to others, without fraud, secrecy, brutality, or conspiracy; 4. Applying to the appellant the practice under the NORMS to the effect that the appellant as a law professor would not be denied deferment without cause; 5. Applying to the appellant the above mentioned practice under the NORMS, without discriminating against the appellant for political reasons or to suppress the development of his concept of the natural science of human law; 6. The NORMS not to be applied to the appellant in an intentionally fraudulent way, simulating due procedure of deferment; 7. The NORMS not to be applied to ~~the~~ appellant by way of conspiracy, depriving him of the benefits of the NORMS; 8. The NORMS

1/According to the discussed Puerto Rican law in the above mentioned paragraphs §(34)-(42), p.29-37, supra 7, as a conclusion of fact, the appellant's employment contract with the UPR require that the appellant be permitted to stay in service with the UPR until he reaches the age of 70, since there existed no cause which would have justified denying him deferment.

not to be applied to the appellant secretly in order to deprive him fraudulently of his professorship and research:

9. The NORMS, requiring the "superior functionaries" to make "correct and true" reports to the CHE [rule ONE, p.3_7, not to be applied to the appellant fraudulently by imputing to him professional incompetence, secretly without giving him the opportunity to be heard.

(45) The above mentioned clauses continue as follows: 10. Not to discriminate against the appellant as a law professor by denying him the deferment without cause, because he does not belong to any political party; 11. Not to discriminate against the appellant as a law professor by denying him deferment without cause, because he is developing a concept of law disagreeable to the political party in power, because this concept would deprive the party of the law as an instrument of the party politics. 12. To give to the evidence offered a rational consideration in any evaluation of his professional competence, (such evidence as for instance, is offered in §(1)-(27), p. 1-23, supra); 13. Treating the appellant like any other professor of law in the use of research and publication secretaries [cf. §() and ff., infra 7; 14. Not to deprive the appellant of the professional and scientific contacts which he can only have through his employment in the UPR Law School and which are indispensable to the development of the concept of the natural science of human law [see P206-208 (J)_7.

(46) 15. Giving the opportunity to the appellant to develop his concept of the natural science of human law,

just as any other law professor is allowed to develop a concept of his theory of law; 16. Not to oblige the appellant to adhere to such "private" philosophies about legal education of the appellees as that, instead of facts, "can-briefs" should be used in the law classes for instruction [cf. n.2, §(22), p.18-19]; 17. Let the appellant enjoy the liberty of professorship and research, guaranteed by Article 11 of the General Regulations of the UPR, 1981 [cf., F1204-1205 (J)]; 18. Give the appellant the opportunity to be heard by an impartial board, whenever there is an irregularity in the proceedings conducted by the state officials of which he may become a victim otherwise.^{1/} In conclusion, the above mentioned clauses [§(43)-(46), supra] create vested rights in the appellant through his contract of employment with the UPR, ~~according to the con-~~ tract law of Puerto Rico [cf. -§(34)-(42), -p.29-37, supra].

EXPECTATIONS (47) The above described evidence concerning the employment contract of the appellant with the UPR [cf. §(28)-(46), supra] and the meritorious performance of the appellant [cf. §(1)-(27), p.1-23, supra] furnish sufficient proofs that the appellant had a firm basis for having rational expectations to continue his services at the UPR, after he reached the retirement age of 65. The appellant expected to continue teaching his law classes and to be able to continue unobtrusively to validate his hy-

^{1/}The testimony offered about the right to such a hearing, and about the fact that in the entire history of the UPR the appellant was the only member of the UPR personnel to which such a hearing was denied, was suppressed by the appellees and by the Courts below.

potheses in these law classes and conclude his research in the field of the natural science of human law. The above referred to expectations include: 1. That the appellant's vested property interest would be respected [cf. §(28)-(46)], not intentionally violated; 2. That the testimony of the students of the appellant and of the practitioners and all other testimony and evidence in favor of the appellant be given a rational consideration [§(1)-(27), supra], not be ignored.

(48) The above mentioned expectations continue as follows: 3. That the testimony and evidence of the appellant's contribution to the legal education and to the community be given rational consideration [cf. §(7)-(16), p. 6-13, supra] ^{1/} 4. That the appellant would be confronted with any testimony, evidence, and accusers against his professional capacity, and that he would have the opportunity to defend himself. 5. That the appellant would be given a hearing by an impartial board whenever he could show irregularities that would affect adversely his professorship and research, such as have been the secret fraudulent reports about the professional incompetency of the appellant [cf. n.l, §(44), p.38, supra]; 6. That the appellant would be given such a hearing whenever he is being evaluated, and the evaluation could lead to his removal with-

1/The appellant's deposition given in public hearing, held at the UPR Law School in November 1978, before the Commission of the P.R. Supreme Court for Evaluation of the Bar Exam and the Legal Education in Puerto Rico, 1978 [mentioned in F740-752 (J)], has been received with the openly expressed approval of the legal practitioners and educators, who were present in that hearing. The evidence offered by the appellant about this deposition was suppressed by the CHE and the Courts below denying the appellant a hearing.

out cause [cf. B(34), p.29, supra].

(49) That the workshop, which includes about 10,000 interdisciplinary works, a considerable part of which the appellant donated to the Law School Library for the use of his students [see F810-811 (J*)], and the interdisciplinary connections, which the appellant developed in the Rio Piedras Campus through many years with support of the Committee for Materialization and Evaluation of Projects [cf. P206-208 (J)], would not be intentionally destroyed without giving a fair hearing to the appellant, specially when the appellees know that this would adversely affect the development of the natural scientific concept of law and reduce, practically to zero, the opportunities of the appellant to obtain a job in other universities; 8. That the fact that ~~there is a common denominator~~ between the teaching and research methods of the appellant, on one side, and, on the other side, the successful law practice methods of the practitioners (as attested to by the appellant's former students), be given rational consideration, not be ignored by intentionally making fraudulent reports imputing to the appellant professional incompetence; 9. That the appellant's natural scientific work in law would be given rational consideration and be continued at the UPR, since the students have testified to the great benefits which they have received exclusively from the results of this work in their law classes, and not destroyed capriciously without an impartial hearing.^{1/}

^{1/}It is a rational expectation that the appellant's scientific work would be continued at the UPR since the Commit-

(50) In conclusion, the expectations [B(47)-(49), p.40-42, supra 7] of the appellant to continue his services at the UPR have been so solid that the appellees, probably pressed by the political orders of the highest state authorities to eliminate Professor Pershe, to annihilate his development of the concept of the natural science of human law, and to deprive him of his professorship and research, felt compelled to start a concerted action in complete secrecy in order to simulate deferment proceedings for the appellant and submit secretly fraudulent reports about the appellant's professional incompetence. The sole purpose of this concerted action has been to deprive the appellant of his federal rights, confident that they can get away with such a felony without punishment, because the defendant would not have economic means to sustain his defense to the end.

SUPPRESSION

(51) The above mentioned concerted activities of the appellees took place in a series of acts which, in their chronological order, look harmless, but all of which indicate two independent characteristics: the intentionality and the conspiracy to deprive the appellant of his

tee for Evaluation and Materialization of Projects, the Administrative Board, and the Chancellor resumed support of the appellant's Project in 1979 [cf. B(21)-(27), p.17-23, supra 7]. This Project was initiated by the same Committee in 1972. In 1980, the above mentioned University bodies gave the appellant a sabbatical leave to resume this Project and to prepare the hypotheses for validation in the appellant's law classes [cf. F73-92 (J*), F130-140 (J*)]. The continuance of the appellant's service to the UPR after he reaches his retirement age was understood in many legally positive ways. The contract of the sabbatical leave obliged the appellant to remain in the service after he reaches his retirement age [cf. F127-129 (J*)]. Besides, the appellant was warned by the Administrative Board that he had to stay at the service of the UPR after the sabbatical leave was over [cf. F124 (J*)] and he had to have two persons to co-sign for him that he would return to work at the UPR after the sabbatical.

federal rights of a substantial importance. In September 1980, the appellant learned that a new law dean was appointed during that summer. The appellant tried to get an appointment with this Dean to show him the progress which he made on his Project while on sabbatical leave and to try to get some additional secretarial publishing help from him in order to be able to prepare a preliminary paper in April 1981 according to a plan submitted to the Chancellor in the beginning of 1980 [cf. F130-131 (J*)]. The appellant had already started to type a chapter in clean on June 25, 1980 [cf. F160-187 (J*)]. However, the appellant was unsuccessful in securing an appointment with this Dean. Finally, on September 30, 1980 the appellant asked the new Dean, appellee Dennis Martinez Irizarry in writing [cf. F146 (J)], to give him an opportunity to explain to the Dean the status of his work. However, the appellant did not receive any response to this letter and all his efforts to see the said Dean remained fruitless until January 16, 1981. On January 7, 1981, the appellant prepared another part of his work for the Dean [cf. F147-159], hoping that the Dean would discuss the appellant's Project now that he had returned from his sabbatical leave, and would need a full-time publication secretary in addition to the part-time investigative secretary who had been assigned to the appellant since May 1980.

(52) Finally, on January 16, 1981 the appellant was called to come to the Dean's Office. The appellant believed that finally he would be able to resolve the pro-

blem of his Project, which was to get the Dean to approve an additional secretary for the appellant. The Dean had to decide this, although the allocation to the appellant of an additional secretary was clearly guaranteed by the new budgetary assignment for six "publication" secretaries for the law faculty members. This was in response to the requirement of the accrediting agencies that the law faculty members be supported technically in making investigations and in preparing papers for publication. The appellant learned about this guarantee, and about the fact that already six secretaries had been hired from the Acting Dean then in May 1980. These secretaries had been hired exclusively for the research of the members of the law faculty not for the administrative work. Since only the appellant and one other faculty member, Dr. Efrain Gonzalez Tejera, were using secretaries, at that time, the appellant thought it would be easy to get the Dean's approval for an additional "publication" secretary for him.

(53) The appellant, in view of the above mentioned circumstances, was confident that the Dean would give due consideration to the fact that the appellant was the only professor who had to meet a publication deadline for April 1981, and would, therefore, grant to the appellant a secretary to be able to meet his special publication compromise. The appellant thought that the Dean would easily assign him such a secretary at least as long as other faculty members continued to dispense with the need of such a secretarial help. The testi- _____

mony that these secretaries, called publication secretaries, were assigned by the Central Administration to the law faculty members, is confirmed by the open invitation of the Dean to the faculty members on July 8, 1981 [cf. F704 (J)_] and again on August 18, 1981 [cf. F714-715 (J)_] urging them to use the publication secretaries and assuring them that these secretaries were guaranteed to them expressly by the specific UPR budget assignment (made in 1980).^{1/}

^{1/}Although the documents F704 and F714-715 are dated as of July 1981, the testimony offered and suppressed by the appellees and the Courts below proves that those special secretaries for the Law School professors were established already in May 1980.

Most respectfully submitted from San Juan,
Puerto Rico, this 22nd day of October, 1983.

Ratimir Maximilian Pershe

RATIMIR MAXIMILIAN PERSHE
pro se

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IN THE SUPREME COURT OF THE UNITED
STATES

October Term, 1983

RATIMIR MAXIMILIAN PERSHE,
Appellant,

v.

ENRIQUE IRIZARRY, et al,
Appellees

On Appeal from the Supreme Court of
the Commonwealth of Puerto Rico

J. APPENDIX TO THE JURISDICTIONAL STATEMENT (AP JUR STA)

[The paging of this Appendix is made with the letter J with page number. An asterisc next to the letter J indicates that the page is fully or in part in English.]

I. Opinions delivered upon the rendering of the Judgment (there is none).

II. Other Opinions and Orders (include next to each Opinion or Order the documents upon the submission of which each was rendered).

III. Judgment (includes, next to the Judgment appealed from, the document upon the submission of which the Judgment was rendered, and the orders, with their corresponding documents, which the Judgment appealed from refers to).

IV. A copy of the Notice of Appeal.

V. Other Materials.

COUNCIL OF HIGHER EDUCATION
UNIVERSITY OF PUERTO RICO
Rio Piedras, Puerto Rico

1981-82
Certification number 32E

I, Luis E. González Vales, Executive Secretary of the Council of Higher Education, CERTIFY:-----

That the Council of Higher Education in its meeting of September 16, 1981, approved the following resolution in relation with the Motion for Reconsideration submitted by Dr. Ratimit Maximilian Pershe in view of the denial by the Council of the deferment of the obligatory retirement requested by said professor:

"This (sic!) CHE studied the petition for deferment of obligatory retirement made by Dr. Ratimir Maximilian Pershe."

"The dispositions which govern the deferment of obligatory retirement are reserved in the Certification No. 59 (1972-73) of the CHE, in which Certification also the procedure is established to follow, in relation to the petition for deferment of obligatory retirement and to the processing subsequent to making said petition."

"The final decision of that which the CHE considers adequate in relation to such petitions is completely discretionary with the CHE."

"Having studied all the records of the case together with the legal opinion of the advisers of the Council, the Council declares the reconsideration requested by Dr. Pershe denied and reaffirms its previous decision of denying the petition for deferment of the obligatory retirement of Dr. Pershe."

And so that it be known, I issued this certification under the seal of the University of Puerto Rico, in Rio Piedras, Puerto Rico, this twenty-fifth day of September of nineteen-eighty-one.

[signed]
Luis E. González Vales
Executive Secretary

NOTE: Translated by the appellant.

CONSEJO DE EDUCACION SUPERIOR
UNIVERSIDAD DE PUERTO RICO
Río Piedras, Puerto Rico

1981-82
Certificación número 32E

Yo, Luis E. González Vales, Secretario Ejecutivo del Consejo de Educación Superior, CERTIFICO:-----

Que el Consejo de Educación Superior en su reunión del 16 de septiembre de 1981 aprobó la siguiente resolución en relación con la Moción de Reconsideración radicada por el Dr. Ratimir Maximilian Pershe ante la denegatoria por parte del Consejo del diferimiento de retiro obligatorio solicitado por dicho profesor:

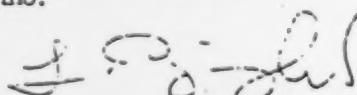
Este Consejo de Educación Superior estudió la solicitud de diferimiento de retiro obligatorio radicada por el Dr. Ratimir Maximilian Pershe.

Las disposiciones que rigen el diferimiento de retiro obligatorio están recogidas en la Certificación número 59 (1972-73) del Consejo de Educación Superior donde también se establece el procedimiento a seguirse con relación a la solicitud de diferimiento del retiro obligatorio y los trámites ulteriores a la radicación de dicha solicitud.

Es enteramente discrecional del Consejo de Educación Superior la decisión final de lo que considera adecuado ante estas solicitudes.

Estudiado todo el expediente del caso junto con la opinión legal de los asesores del Consejo, se declara sin lugar la reconsideración radicada por el doctor Pershe y se reafirma este Consejo en su decisión anterior de denegar la solicitud sobre diferimiento del retiro obligatorio del doctor Pershe.

Y para que así conste, expido la presente certificación bajo el sello de la Universidad de Puerto Rico, en Río Piedras, Puerto Rico, hoy día veinticinco de septiembre de mil novecientos ochenta y uno.


Luis E. González Vales
Secretario Ejecutivo

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN CHAMBER

RATIMIR MAXIMILIAN PERSHE

Petitioner

v.

ENRIQUE IRIZARRY, PRES. OF THE
COUNCIL OF HIGHER EDUCATION,
AND OTHERS

Respondents

CIVIL NO. 81-6055 (907)

ABOUT:

PETITION FOR REVIEW

JUDGMENT*

Having examined the records of the case and the Judgment of the Supreme Court overruling our Decision of the 4th of February, 1982, I deny the Petition for Review in this case. The petitioner has not shown that the respondents abused their discretion by denying him the petition for dispensation, neither that he had a clear right to be heard.

Enter and Serve.

In San Juan, Puerto Rico, this 29th day of November, 1982.

[signed]
PETER ORTIZ
JUDGE

*Summary Judgment (this footnote is supplied by the appellant).

NOTE: This document has been translated by the appellant.

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE SAN JUAN

RATONER MAXIMILIAN FORSIE

CIVIL NUM. 81-6055 (907)

Recurrente

SOBEE:

v.

ENRIQUE IRIZARRY, PRES. CONSEJO
EDUCACION SUPERIOR, Y OTROS

SOLICITUD DE REVISION

Recurridos

SENTENCIA

Examinados los autos del caso y la Sentencia del Tribunal Supremo revocando nuestra Resolución del 4 de febrero de 1962, se declara sin lugar la Petición de Revisión en este caso. El recurrente no ha demostrado que la parte recurrida abusara de su discreción al denegarle la solicitud de dispensa ni que tuviera un derecho claro a ser oído.

Regístrese y Notifíquese.

En San Juan, Puerto Rico, a 29 de noviembre de 1962.

(4ab.)
PIER ORTIZ
JUEZ

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN CHAMBER

RATIMIR MAXIMILIAN PERSHE

Petitioner

v.

ENRIQUE IRIZARRY, PRES. OF THE
COUNCIL OF HIGHER EDUCATION,
AND OTHERS

Respondents

CIVIL NO. 81-6055 (907)

ABOUT:

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Having examined the records of the case and the Judgment of the Supreme Court overruling our Decision of the 4th of February, 1982, I deny the Petition for Review in this case. The petitioner has not shown that the respondents abused their discretion by denying him the petition for dispensation, neither that he had a clear right to be heard.

Enter and Serve.

In San Juan, Puerto Rico, this 29th day of November, 1982.

[signed]
PETER ORTIZ
JUDGE

*Summary Judgment (this footnote is supplied by the appellant).

NOTE: This document has been translated by the appellant.

IN THE SUPREME COURT OF PUERTO RICO

Ratimir Maximilian Pershe,

Petitioner

v.

Enrique Irizarry, President
of the Council of Higher
Education and others,

Respondents

Num. 0-83-48

Certiorari

DECISION

San Juan, Puerto Rico, this 26 day of May, 1983.

To the preceding motion for reconsideration*, in view of our Decisions of March 24, April 14 and May 5 of the current year, abide by that which has been decided.

This resolved the Court and certifies the Mistress Clerk of the Court. The Chief Judge Mister Trias Monge disqualified himself.

[Signed]

Lady Alfonso de Cumpiano
Clerk of the Court

[Official Seal of the Court]:
Commonwealth of Puerto Rico
General Court of Justice
Supreme Court

*Referring to the Fourth Motion for Reconsideration (this note is supplied by the appellant).

NOTE: This document has been translated into English by the appellant.

IN THE SUPREME COURT OF THE
COMMONWEALTH OF PUERTO RICO

RATIMIR MAXIMILIAN PERSHE,

Petitioner

v.

ENRIQUE IRIZARRY, President of the
Counsel of Higher Education of the
University of Puerto Rico; ISMAEL
ALMODOVAR, President of the Uni-
versity of Puerto Rico; ANTONIO
MIRO MONTILLA, Chancellor of the Rio
Piedras Campus of the University of
Puerto Rico; DENNIS MARTINEZ IRIZARRY,
Dean of the Law School of the Univer-
sity of Puerto Rico,
Respondents.

CERTIORARI NO.0-83-48

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Ratimir Maximilian Pershe,
the petitioner above named, hereby appeals to the Supreme
Court of the United States from the final order of the
Supreme Court of the Commonwealth of Puerto Rico, denying
certiorari, entered in this action on the 26th day of May,
1983.

This appeal is taken pursuant to 28 U.S.C. sec. 1258(2).

In San Juan, Puerto Rico this 30th day of June, 1983.



Alberto E. Lugo Janer
ALBERTO E. LUGO JANER
Attorney for Petitioner
Ave. Ponce de León #613
Hato Rey, Puerto Rico 00917
Tels. (809) 763-4060
763-3813
Residence 728-3037

IN THE SUPREME COURT OF PUERTO RICO

Ratimir Maximilian Pershe,

Petitioner

v.

Enrique Irizarry, President
of the Council of Higher
Education and others,

Respondents

Num. 0-83-48

Certiorari

DECISION

San Juan, Puerto Rico, this 10th day of November, 1983.

The preceding petition for translations "in forma pauperis" is denied.

This resolved the Court and certifies the Mistress Clerk of this Court. The Chief Judge Mister Trias Monge disqualified himself. The Associate Judge Mister Rebollo López did not intervene.

[Signed]

Lady Alfonso de Cumpiano
Clerk of the Court

[Official Seal of the Court]
Commonwealth of Puerto Rico
General Court of Justice
Supreme Court

NOTE: This document has been translated into English by
the appellant.

Supreme Court, U.S.

FILED

OCT 23 1983

Alexander L. Stevas, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

RATIMIR MAXIMILIAN PERSHE,
Petitioner

v.

ORIGINAL

ENRIQUE IRIZARRY, President of the Council of Higher Education of the University of Puerto Rico; ISMAEL ALMODOVAR, President of the University of Puerto Rico; ANTONIO MIRO MONTILLA, Chancellor of the Río Piedras Campus of the University of Puerto Rico; DENNIS MARTINEZ IRIZARRY, Dean of the Law School of the University of Puerto Rico,
Respondents

RECEIVED

APR 17 1984

OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner, Ratimir Maximilian Pershe, asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner did not sought leave to proceed in forma pauperis in any court below. Petitioner's affidavit in support of this motion is attached hereto.

Ratimir Maximilian Pershe

RATIMIR MAXIMILIAN PERSHE

Box 22251, University Station
Río Piedras, Puerto Rico 00931
Tel: (809) 767-9333

AFFIDAVIT

I, Ratimir Maximilian Pershe, being first duly sworn according to law, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor, and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed?

No.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

June 30, 1981; \$2,908.00 gross, \$1,612.53 net.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interests, dividends, or other source?

Yes

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

Federal Social Security, \$843.00 per month jointly with my wife Irmi Pershe.

3. Do you own any cash or checking or savings account?

Yes.

a. If the answer is yes, state the total value of the items owned.

\$3,890.11

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes.

a. If the answer is yes, describe the property and state its approximate value.

A 1972 volkswaken automovile, valued at \$150.00 approximately.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

My wife Irmi Pershe and I depend upon each other.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties of perjury.

In San Juan, Puerto Rico, this 12th day of April, 1984.

Ratimir Maximilian Pershe

RATIMIR MAXIMILIAN PERSHE
Box 22251, University Station
Río Piedras, Puerto Rico 00931
Tel: (809) 767-9333

Affidavit No.: 1105

Subscribed and sworn to be true before me by Ratimir Maximilian Pershe, of the above given description, known to me personally to be such, this 12th day of April, 1984; in witness thereof, I, being a notary public of the Commonwealth of Puerto Rico, hereunto set my hand and affix my official seal, in San Juan, Puerto Rico this 12th day of April, 1984.

Reinaldo Campolla Brianti
NOTARY PUBLIC



ORIGINAL

FILED
MAY 20 1984

ALEXANDER L. STEVENS
CLERK

No. 83-6591

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

RATIMIR MAXIMILIAN PERSHE,

Appellant,

VS.

ENRIQUE IRIZARRY, President of the
Council of Higher Education of the
University of Puerto Rico; ISMAEL
ALMODOVAR, President of the University
of Puerto Rico; ANTONIO MIRÓ MONTILLA,
Chancellor of the Río Piedras Campus of
the University of Puerto Rico; DENNIS
MARTINEZ IRIZARRY, Dean of the Law
School of the University of Puerto Rico

Appellees

On Appeal from the Supreme Court of
The Commonwealth of Puerto Rico

MOTION TO DISMISS

(Proceedings are in Forma Pauperis)

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RECEIVED

MAY 20 1984

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

RATIMIR MAXIMILIAN PERSHE,

Appellant,

VS.

ENRIQUE IRIZARRY, President of the Council of Higher Education of the University of Puerto Rico; ISMAEL ALMODOVAR, President of the University of Puerto Rico; ANTONIO MIRO MONTILLA, Chancellor of the Río Piedras Campus of the University of Puerto Rico; DENNIS MARTINEZ IRIZARRY, Dean of the Law School of the University of Puerto Rico

Appellees

On Appeal from the Supreme Court of
the Commonwealth of Puerto Rico

MOTION TO DISMISS
(Proceedings are in Forma Pauperis)

Comes now the appellees through their undersigned attorneys and respectfully allege and pray:

1. Profesor Ratimir Maximilian Pershe celebrated his 65th birthday on May 24, 1981 after serving the Law School of the University of Puerto Rico for 18 years. Upon reaching the age of 65, applicable rules and regulations for the University's employees made it mandatory for such an employee to retire. (Appellee's Exhibit 1 consists of Rule or "Certification" 59 and its translation into English is Exhibit 2). If the employee wanted to continue rendering services to the University an application had to be filed with the Board of Directors of the University (known as the Council of Higher Education) in order to obtain a deferment on a year to year basis. (Complementary Norms for Processing Deferment of the Obligatory Retirement of the University of Puerto Rico personnel, Certification number 59, 1972-73 of the Council of Higher Education, Exhibits 1 and 2).

Professor Pershe filed his application in accordance with the established regulations. However, the pertinent authorities denied the same after receiving negative recommendations from the Dean of the Law School, the Chancellor and the President of the University of Puerto Rico. Professor Pershe's application was not recommended by anyone in the pertinent administrative structure of the University. (See Exhibit 3 and its translation Exhibit 4).

These facts gave rise to this voluminous case which covered legal actions in four different forums: the Council of Higher Education (CHE), the Superior Court of San Juan, the Supreme Court of Puerto Rico and now this Honorable Court.

In his jurisdictional statement under the section "Questions Presented" appellant alleges very serious accusations against the Dean of the Law School, of "secret fraudulent imputations" made "intentionally" by the said dean... "in conspiracy with the Chancellor, 1/ the President of the University, and the President of the CHE." 2/ (Page 2 of appellant's Jurisdictional Statement).

The denial of the right to a hearing is stressed and repeated by the appellant which, together with allegations of fraudulent imputations and conspiracy to defraud seem to state a constitutional issue, thus obtaining jurisdiction before this court. It also seems to raise a federal question.

We would like to clarify the background and the facts as they were litigated before the Commonwealth courts in order to prove to this Honorable Court that under Rule 16 of the U.S. Supreme Court Rules:

1/ However, on page 4 of the jurisdictional statement we seem to wonder whatever happened to the alleged conspiracy when appellant alleges that "the Chancellor was about to change his recommendation into a favorable one".

2/ The conspiracy also involved "Mr. Burgos" the associate Secretary of the CHE and by his "coworker" whose name we are not informed.

a) This case does not present a substantial federal question;

b) The judgment rests on an adequate non federal basis;
and

c) The question on which the decision of the cause depends are so unsubstantial as not to need further argument.

I

By his own admissions Prof. Pershe led a meritorious career in the Law School of the University of Puerto Rico. (Page 1-3 of the "Statement of the Case")

He was also granted several sabbatical leaves in order to prepare his hypothesis on "the natural science of human law" or the "biophysical characteristic of law".

It seems he was treated with respect and fairness by the administration of the Law School during many years until certain administrative discrepancies and personal problems began to arise between Dr. Pershe and the new dean of the Law School during the last portion of his tenure. These problems apparently arose after 1978. (Pages 19 thru 22 of appellant's jurisdictional statement)

Appellant presented several exhibits (J 505-506-507-769-770 786-795-810) describing a certain controversy involving approximately 1629 books borrowed by Dr. Pershe during the course of time and which he apparently kept at his house for personal reference. Not that any illegality is now being alleged from this fact, but if the discretionary powers of the University's governing body are at stake and its administrative discretion is under attack, then we should be aware of the existence of controversy and personal issues between the parties.

It also appears from appellant's exhibits (J-508) that the Law School was suffering from a lack of sufficient office space for its full time professors at the time Dr. Pershe's deferment was being considered.

From all of this, the Law School's personnel committee seems to have "unfavorably recommended" appellant's deferment petition due to "communication difficulties with this professor". (Exhibits 3 and 4).

(Also see appellant's exhibits J-841-842-843). From our Exhibits 3 and 4 it arises that neither the Chancellor of the Río Piedras Campus nor the President of the University of Puerto Rico recommended the request for deferment. Such was the situation before the CHE when it met to consider Mr. Pershe's extension petition. To have granted a deferment under such circumstances would have meant that the CHE had to overrule all the chief administrators of the University from the President down to the Dean of the Law School and its personnel committee. In fact, it denied the petition (Exhibits 5 and 6).

It should be beyond the scope of this Honorable Supreme Court to enter into personal disputes by and between law professors and law school deans of a distinctly local nature.

When the law mandates retirement, said law (like all laws) must be obeyed. An exception to the law or exemption from it is an administrative decision to be decided by the administrative body created for such purpose at their discretion and from the record of the employee taken as a whole.

The courts may not invade the field of discretion conferred by laws upon an administrative agency.

(New York v. United States, 331 US 284, 91 L ed 1492, 67 S Ct 1207; American Power & L Co. v. Securities & Exch. Com. 329 US 90, 91 L ed 103, 67 S Ct. 133; Phelps Dodge Corp. v. NLRB, 313 ALR 1217; Haggerty v. Oakland 161 Cal App 2d 407, 326 P2d 957, 66 ALR 2d 718; State ex rel. Burnquist v. District Ct. 141 Minn 1, 168 NW 634, 3 ALR 1476; Small v. Moss, 277 NY 501, 14 NE 2d 808.

The discretion reposed in administrative agencies is one of the outstanding characteristics of such agencies, and this discretion is recognized and respected upon judicial review of administrative action. In fact, an administrative agency is on sounder ground in establishing a particular doctrine as an announced exercise of its own discretion than in attempting to found the same doctrine on judicial pronouncements which the highest court may not regard as sufficient.

(Texas Gas Transmission Corp. v. Shell Oil Co. 363 US 263, 4 L ed 2d 1208, 80 S Ct 1122; Federal Communications Com. v. R. C. A. Communications, Inc. 346 US 86, 97 L. ed 1470, 73 S Ct 998; Securities & Exch. Com. v. Chenery Corp. 332 US 194, 91 L ed 1995, 67 S Ct 1575, 1760, reh den 332 US 783, 92 L ed 367, 68 S Ct. 26.)

The very essence of a discretionary power is that the person or persons exercising it may choose which of several permissive courses will be followed.

(Secretary of Agriculture v. Central Roig Refining Co. 338 US 604, 94 L ed 381, 70 S Ct 403; Commonwealth ex rel. Meredith v. Frost, 295 Ky 137, 172 SW 2d 905).

Discretion is defined, when applied to public functionaries other than courts, to be a power or right, conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience as to what is just and proper under the circumstances, uncontrolled by the judgment or conscience of others.

(Ex parte Anderson, 191 Or 409, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051. See United States ex rel. Accardi v. Shaughnessy, 347 US 260, 98 L ed 681, 74 S Ct. 499).

The courts may not invade the field of discretion conferred by law upon an administrative agency.

(New York v. United States, 331 US 284, 91 L ed 1492, 67 S Ct. 1207; American Power & L. Co. v. Securities & Exch. Com. 329 US 90, 91 L ed 103, 67 S Ct. 133; Phelps Dodge Corp. v. NLRB, 313 US 177, 85 L ed 1271, 61 S Ct. 845, 133 ALR 1217; Haggerty v. Oakland, 161 Cal App 2d 407, 326 P2d 957, 66 ALR2d 718; State ex rel. Burnquist v. District Ct. 141 Minn 1, 168 NW 634, 3 ALR 1476; Small v. Moss, 277 NY 501, 14 NE2d 808).

This is what the Superior Court of San Juan (Exhibits 7 & 8) and the Supreme Court of Puerto Rico (Exhibits 9, 10, 11 & 12) decided based on sound administrative law.

Clearly no substantial federal question was present in the case.

The rule making powers of the University of Puerto Rico and of its governing body, the Council of Higher Education (CHE) arises from state law number 10 of January 20, 1966, as amended, (18 LPRA 601 et seq.)

Under these powers granted by the legislature of the Commonwealth of Puerto Rico it seems that the University through the Council of Higher Education approved through the years several decrees regulating retirement rights, benefits and procedures for the University's employees.

Under the applicable rules in existence on September, 1983 it was mandatory for employees to retire upon reaching the age of 65.

We translated Certification Number 59, of 1972-73 issued by the CHE and which is the main source of controversy in this case. (See Exhibit "2"). Throughout this rule (called "Certification" by the CHE) the retirement process and its deferment possibilities are regulated in detail. Even though the rule talks about the "right to Deferment" it is clear that it means the right to request deferment. It is also clear that the CHE retains the power to decide or resolve finally what it considers adequate. (Page 3, Sec. II. First clause Exhibit "2").

The rule is definite and specific as to the time to request deferment, the length (one year) of such extension if approved, forms to be filled out, administrators that must handle the applications and issue the appropriate recommendations, and the date for CHE's final consideration. It also covers the number of days given to certify the decision and notification of the decision as well as the number of copies of the decision to be issued and to whom.

Very little, if any, in the retirement - deferral process is left to the administrator's discretion, except the recommendation. Even so, several recommendations were requested (in Pershe's case) from the Dean of the School, Chancellor of University and the President of the University. Upon these endorsements or opinions the CHE drew its conclusions. 3/

To attack this process as unconstitutional or in violation of the due process clause of the Constitution of the United States is to turn its back from the administrative and discretionary powers of the CHE. Also, it means trying to involve the U.S. Supreme Court into the menial task of running a state university and deciding on its hiring policies under the pretext that a federal question is involved.

Again, no federal question is really present, only a common, ordinary administrative law problem.

3/ In other rules (see appellant's exhibits J-576, 577 and 578) the CHE enters upon the hiring or rehiring practises and limitations of retired personnel.

II

Professor Pershe seems to convey the erroneous impression in his Jurisdictional Statement that he has been the only professor to have been denied deferment 4/ by the University of Puerto Rico. To be more in line with the facts, we should examine appellant's exhibits J-839 and J-840 which we translated for this Court. (Exhibits 13 & 14). Mr. Pershe's deferment petition was considered by the CHE together with twenty five other applicants for deferment; twenty were approved and five were denied. 5/ Among the five denied was appellant's petition. These applications are handled yearly by the CHE as a matter of routine, and as part of its administrative responsibilities.

III

If any doubt as to Mr. Pershe's right to a hearing or review exists in the mind of this court, we would like to remind this Honorable Court of the following:

Mr. Pershe's judicial review of the CHE's administrative decision was thorough and complete. Not only did he have several hearings before the Superior Court of San Juan, but also a review through Certiorari before the Supreme Court of Puerto Rico. At first instance the Superior Court granted Pershe's request for temporary relief and ordered reinstatement of the Professor in his academic duties until such time as the case was finally adjudicated on its merits.

However, the Supreme Court of Puerto Rico, reversed this order establishing that the CHE's determination was clearly of a discretionary nature and therefore not to be set aside by judicial review in the absence of extraordinary circumstances. (Exhibits 9 & 10).

In line with this reasoning, the Superior Court again took matters into consideration and finally adjudicated that (J-242)..." the petitioner had not shown that the respondents abused their discretion, neither that he had a clear right to

4/ Appellant is clear that he means the only professor in the Law School of the University of Puerto Rico.

5/ The other four were also from the University of Puerto Rico, Rio Piedras Campus

hearing before the Council of Higher Education. (Exhibits 7 & 8).

Again the matter was taken before the Honorable Supreme Court of Puerto Rico where this Court affirmed the lower court's decision and denied four motions of reconsideration (Exhibits 15 & 16") extensively argued and pleaded by Professor Pershe.

IV

The main theory of the appellant is that he had a right to an evidentiary hearing before the CHE in petitioning for deferment or requesting reconsideration.

It seems that the appellant does not argue that the detailed process under the rules governing the deferment was not followed. What he seems to be saying is:

a) That he had a right to a hearing before the CHE in order to present certain evidence on his good qualifications and/or to prove certain fraudulent imputations made against his good name. He claimed before the CHE that these fraudulent imputations were behind the unfavorable recommendation by the Dean. With this evidence he wanted to convince the CHE to reconsider. Such an evidentiary hearing before the CHE allegedly was not given.

b) In sound contract law and under the Puerto Rico Civil Code he had the "right" to have his contract renewed.

Let us first examine his request for an evidentiary hearing. Mr. Pershe does not explain nor detail exactly what were the alleged fraudulent imputations made against his person and/or good name in conspiracy by and between the Dean of the Law School, the Chancellor, the President of the University and the President of Council of Higher Education (as well as some of their executive personnel). He alleges the existence of such fraudulent imputations and emphasizes the excellence of his work together with the endorsement of his students in order to justify a reversal of the administrative discretion and the administrative decision of said Dean, Chancellor and President.

He wanted an evidentiary hearing before the CHE in support of his motion of reconsideration in order to prove his allegations of excellence as a professor and fraudulent imputations

to examine his record together with the recommendations of the Dean, Chancellor and President and with this issued their decision. This was the standard procedure by the CHE followed yearly in processing deferment petitions. No hearing before the CHE was ever granted under such circumstances and for such petitions.

The main problem with Pershe's petition for hearing was that neither the alleged conspiracy nor the secret fraudulent imputations ever arose before any person, nor before any administrative officer, nor before any forum. It was never an issue before the CHE (nor the Dean, nor the Chancellor nor the President). There were no documents nor any evidence containing derogatory remarks nor opinions about Mr. Pershe before any administration nor before any administrative body.

The only document alleging the existence of any kind of fraudulent imputations whatsoever was raised solely by Mr. Pershe himself. He claims someone had falsely accused him but the CHE did not find any evidence in that direction of who said what, which was false. The CHE examined recommendations for deferment and all were negative. This was the standard proceeding; this is what was followed.

The CHE had before itself a document (Exhibits 3 & 4) with an unfavorable recommendation from the three highest ranking officials at the University of Puerto Rico. These were the people who knew him, knew of his record, could attest to his qualifications and had to make a recommendation according to the regulations.

The right to a hearing is not absolute in administrative law. In many situations a hearing is required neither by statute, regulation, nor by the due process clause and such situations are not limited to those in which a statute expressly provides that no notice and hearing is necessary.

(Cafeteria & Restaurant Workers Union v. McElroy, 367 US 886, 6 L ed 2d 1230, 81 S Ct 1743; People ex rel. Bluett v. Board of Trustees, 10 Ill App 2d 207, 134 NE2d 635, 58 ALR2d 899 (emphasizing lack of authority to compel attendance of witnesses or to compel them to testify); Walker v. Clinton, 244 Iowa 1099, 59 NW2d 785; State ex rel. Leggett v. Jensen (Mo) 318 SW2d 353; Leach v. Coleman (Tex Civ App) 188 SW2d 220, error ref. w m; Green Mountain Post v. Liquor Control Board, 117 Vt 405, 94 A2d 230, 35 ALR2d 1060.

It is not essentially arbitrary for an administrative agency to exercise its lawful authority without a hearing where none is required.

(Albert v. Public Service Com. 209 Md 27, 120 A2d 346 (application of group of taxicab drivers for 100 permits to operate taxicabs); Ex parte Anderson, 191 Or 409, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051 (revocation of parole); Thayer Amusement Corp. v. Moulton, 63 RI 182, 7 A2d 682, 124 ALR 236 (application for motion-picture license); State ex rel. Billado v. Wheelock, 114 Vt 350, 45 A2d 430 (application for liquor license).

Many cases held that where the purpose of an administrative determination is to decide whether a right or privilege which an applicant does not possess shall be granted to him or withheld in the exercise of a discretion vested by statute, notice and hearing is not necessary in the absence of an express or implied statutory provision thereof, and a statute may provide for such determinations without requiring notice and hearing.

(Jay v. Boyd, 351 US 345, 100 L ed 1242, 76 S Ct 919 (unfettered discretion); Garden Court Apartments v. Hartnett, 45 Del 1, 65 A2d 231 (application for building permit; hearing provided on appeal to city council); Albert v. Public Service Com. 209 Md 27, 120 A2d 346 (license to operate taxicab was mere privilege); Adams Theatre Co. v. Keenan, 12 NJ 267, 96 A2d 519 (theatre license; opportunity to test basis of action upon judicial review); Fink v. Cole 1 NY2d 48, 150 NYS2d 175, 133 NE2d 691 (racing license is privilege); Thayer Amusement Corp. v. Moulton, 63 RI 182, 7 A2d 682, 124 ALR 236 (license to show motion picture is mere privilege); State ex rel. Billado v. Wheelock, 114 Vt 350, 45 A2d 430 (liquor license; discretion was quasi-judicial in character).

If no personal or property rights are involved, but only a "privilege", notice or hearing may not be essential to due process of law even though the power exercised is recognized as quasi-judicial or adjudicatory, particularly where the statute provides for judicial review of the administrative determination. Similarly, it is held that where a right is granted conditionally and subject to termination, it may be withdrawn in accordance with the conditions subject to which it was received, including the absence of any right to hearing.

(Cook Cleland Catalina Airways, Inc. v. Civil Aeronautics Board, 90 App DC 220, 195 F2d 206; Darling Apartment Co. v. Sringer, 25 Del Ch 420, 22 A2d 397, 137 ALR 803. Walker v. Clinton, 244 Iowa 1099, 59 NW 2d 785 (revocation of beer permit); Hadden v. Aitken, 156 Neb 215, 55 NW2d 620, 35 ALR2d 1003 (suspension of driver's license); State ex rel. Billado v. Wheelock, 114 Vt 350, 45 A2d 430 (license to sell intoxicating liquors); School Dist. v. Callahan, 237 Wis 560, 297 NW 407, 135 ALR 1081 (consolidation of school districts). Doyle v. Kahl, supra; Green Mountain Post v. Liquor Control Board, 117 Vt 405, 94 A2d 230, 35 ALR2d 1060).

Retirement due to age is not the equivalent of a discharge. (Ellmore v. Bruckner, 236 F 2d 734, 1 L Ed 44 77 S Ct. 329). There is no right to a hearing in cases such as this. (Geary v. Phillips, 278 NY 2d 506).

This is especially true in cases where the retirement for termination of employment is mandatory by law and the deferment is discretionary. The Supreme Court of Puerto Rico as recently as 1982 in the case of Sánchez Carambot v. Matheu, decided on June 17, 1982 (82 JTS 100, page 2750) reiterated the doctrine that courts should not substitute their opinion with administrative decisions of University authorities, even in cases where disciplinary measures are being reviewed; unless there is manifest excess or error.

V

What about Pershe's contract law theory about his right to review?

He claims that when he acquired the right to tenure he also acquired "a right to implied tenure, to be removed only for cause, after he has arrived at the retirement age" (page 27)

The problem with this theory is that this is not what the law or regulation says. If he is working with the University of Puerto Rico he must abide by the University's laws. The law was clear in that his retirement was mandatory at the age of 65 and only created the right to request a deferment from the Council of Higher Education. It is contradictory to say that a contract made by the University of Puerto Rico with an employee of said University has an implied condition to the effect that the

University must grant him continuous tenure after reaching the age of 65 when the regulations distinctly say he must retire. A contract may not be contrary to the law (Section 3372 of the Puerto Rico Civil Code 31 LPRA 3372).

Since special regulations ordered the retirement of Mr. Pershe upon reaching the age of 65, and Mr. Pershe lived with this regulation for 18 years, he cannot allege that anything in the contract nor the circumstances surrounding it created a clause that was contrary to the law. Even though the Civil Code of Puerto Rico may contain certain articles that under general circumstances give "usage" certain weight in interpreting implied clauses, such general provisions of the general law may not revoke a clear mandate of a special law.

What we are really trying to say is that the entire issue is local. We are dealing with a contract situation and the Civil Code of Puerto Rico. No federal question of national importance is present.

VI

The Supreme Court of Puerto Rico as well as the Superior Court of San Juan issued their decision in this case based on sound administrative and contract law as interpreted by them under the local jurisprudence and the Civil Code of Puerto Rico. This decision was also based on the facts.

Denial of deferment only "for cause" is also the theory of appellant. There was cause. The cause was the opposition of the Dean, the Chancellor and the President of the University of Puerto Rico, the very same people whose responsibility it was to hire and fire in the University. Before the Council of Higher Education was a rule saying that Mr. Pershe had to retire, in addition there was the decision of the officials who knew Mr. Pershe and did not personally recommend him. What else could the CHE do? 6/

6/ We cannot help but mention the extreme of appellant's petty grievances when in his jurisdictional statement, (pages 44 and 45) he takes this court's time in mentioning the problems he had with the Dean of the Law School in the use of certain secretaries for the publication of certain works.

From the above we believe it certain that the judgment issued by the Supreme Court of Puerto Rico rests on an adequate non federal basis. Moreover, the issue is so unsubstantial as not to need further argument.

WHEREFORE, it is respectfully requested that this Honorable Court dismiss the appeal file in this case.

On this 14th of May, 1984.

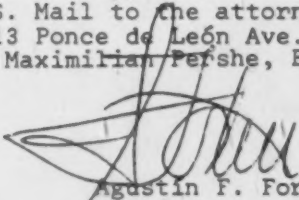
Ricardo L. Rodríguez Padilla
Agustín F. Fortuño
P. O. Box 13786
Santurce, Puerto Rico 00908
Tel. 758-6805

By: 

Agustín F. Fortuño

PROOF OF SERVICE

The undersigned Agustín F. Fortuño, the attorney of record in the above case for the appellees does hereby state that on the above date, May 14th, 1984 a copy of this Motion to Dismiss was sent through the U. S. Mail to the attorney for the appellant Alberto E. Lugo Janer, 613 Ponce de León Ave., Hato Rey, Puerto Rico 00917, and Ratimir Maximilian Pershe, Box 22251, Rio Piedras, Puerto Rico.


Agustín F. Fortuño

/atf

CONSEJO DE EDUCACION SUPERIOR
UNIVERSIDAD DE PUERTO RICO
Río Piedras, Puerto Rico

1972-73
Certificación número 59

Yo, Luis E. González Vales, Secretario Ejecutivo del Consejo de Educación Superior, CERTIFICO:-----

Que el Consejo de Educación Superior en su reunión ordinaria del 9 de febrero de 1973 aprobó las siguientes

NORMAS COMPLEMENTARIAS PARA TRAMITAR EL DIFERIMIENTO
DEL RETIRO OBLIGATORIO DEL PERSONAL UNIVERSITARIO

I. Base reglamentaria y su interpretación

Las disposiciones que rigen el Diferimiento del Retiro Obligatorio son: A. - El Artículo 1 de la Sección 5 del Capítulo III del Reglamento de la Universidad de Puerto Rico y B. - La Sección 14 del Artículo 5 de la Resolución del Consejo de Educación Superior, de 26 de noviembre de 1950, que estableció el Sistema de Retiro de la Universidad de Puerto Rico, que citamos a continuación:

- A. " Todo miembro del personal docente que no esté afiliado al Plan de Pensiones de la Universidad será jubilado sin pensión al alcanzar la edad de 65 años. Dicha jubilación será efectiva en 30 de junio subsiguiente a la fecha en que el catedrático cumpla los 65 años. A petición del catedrático afectado y con la aprobación del Consejo Superior de Enseñanza, dicha jubilación podrá diferirse después de haber el catedrático cumplido los 65 años por períodos adicionales de un año cada uno. No obstante, en ningún caso se permitirá el diferimiento de dicha jubilación después del 1ro del julio subsiguiente a la fecha en que el catedrático alcance la edad de 70 años.

Este artículo no aplica al personal docente que rinda sus servicios a base de contrato a distinción de nombramiento ni a profesores extraordinarios y visitantes a quienes la Universidad interese aprovechar en determinadas tareas académicas. "

E. "Retiro Obligatorio: A partir del 1ro de julio de 1950 todo miembro que haya alcanzado la edad de 65 años será retirado, con efectividad al 30 de junio siguiente a la fecha que alcanzara dicha edad. Mediante solicitud escrita de un miembro, aprobada por el Consejo de Educación Superior, el retiro de dicho miembro podrá diferirse después de la edad de 65 años, por períodos de 1 año; pero en ningún caso dicho diferimiento podrá pasar del 1ro de julio siguiente a la fecha en que el miembro alcance la edad de 70 años."

La premisa inicial, común a las dos disposiciones previamente transcritas, es que todo miembro del personal universitario, al llegar a los 65 años de edad, será retirado del servicio activo, con efectividad al 30 de junio siguiente. La diferencia entre ambas disposiciones estriba en que la segunda se contrae a los miembros del Sistema de Retiro de la Universidad de Puerto Rico, los cuales serán retirados con derecho a percibir la jubilación que les corresponda, mientras que la primera disposición se refiere a los que no pertenezcan a dicho Sistema de Retiro, que no percibirán de éste jubilación alguna, al ser retirados.

El derecho de decidir si quieren solicitar el Diferimiento del Retiro para el año fiscal siguiente, corresponderá a los interesados que cumplan de 65 a 69 años de edad del 1ro de julio al 30 de junio de cada año fiscal. Será responsabilidad de los interesados el formular dicha petición dentro de los términos y condiciones señalados en las disposiciones antes reproducidas y en estas Normas, que serán de aplicación a todo el personal universitario, excepto a aquél que se encuentre bajo contrato de servicio y a los profesores extraordinarios y visitantes.

II. Sobre el Derecho al Diferimiento y sus Obligaciones

PRIMERA: Será obligación de los funcionarios superiores del promovente el informar favorable o desfavorablemente la Solicitud de Diferimiento, pudiendo formular las observaciones que estimen atinentes, a los efectos de que el Consejo de Educación Superior pueda resolver finalmente lo que considere adecuado.

SEGUNDA: Todas las Solicitudes de Diferimiento del Retiro se formularán para el siguiente año fiscal completo y sin excederse del mismo, durante cuyo término el interesado se compromete a continuar colaborando con la Institución, quedando impedido de acogerse, durante dicho período, a los beneficios del retiro voluntario.

TERCERA: No se efectuará pago alguno con cargo a los fondos del Sistema de Retiro de la Universidad de Puerto Rico por concepto de jubilación voluntaria, a ningún miembro del Personal Universitario al que se haya concedido el Diferimiento del Retiro durante el año a que dicha petición se contraiga, por entender que al llenar la Solicitud de Diferimiento se está renunciando por un año al derecho de acogerse al retiro voluntario.

CUARTA: Después del 30 de junio de cada año no se efectuará pago alguno contra las cuentas presupuestarias de la Universidad, correspondientes a sueldos, a favor de los miembros del Personal Universitario que estén sujetos al Retiro Obligatorio, caso de no haber sido solicitado y finalmente aprobado el Diferimiento del mismo.

III. Sobre la Tramitación del Diferimiento

PRIMERA: Del 1ro al 14 de febrero de cada año, las Oficinas de Personal de cada una de las Unidades Institucionales y Administrativas del Sistema Universitario, determinarán cuales miembros del Personal Universitario se encuentran sujetos al Retiro Obligatorio al 30 de junio de ese año. Dichas oficinas procederán a notificarlo así a los interesados, por conducto de los respectivos decanatos o unidades administrativas, advirtiéndoles de su derecho a solicitar el Diferimiento del Retiro Obligatorio, para lo cual les remitirán un juego de los formularios que al efecto haya redactado y distribuido la Oficina de Personal de la Administración Central para todo el Sistema Universitario.

SEGUNDA: Del 15 al 28 de febrero de cada año, los miembros del Personal Universitario, que estén interesados en solicitar el Diferimiento del Retiro Obligatorio procederán a llenar y suscribir el Apartado I del formulario correspondiente. Igualmente, dentro de este término, deberán obtener del Servicio Médico de la Unidad Institucional correspondiente la Certificación Médica que se hará constar en el Apartado II de dicho formulario, relativa al estado de salud del interesado. Además, queda a discreción del Facultativo el utilizar como guía para el examen médico el formulario OP-12. Finalmente, el interesado habrá de devolver este documento a la Oficina de Personal de su Unidad Institucional.

4

TERCERA: Antes del 15 de marzo de cada año, la Oficina de Personal de la Unidad Institucional o Administrativa correspondiente procederá a llenar y certificar los particulares a que se contrae el Apartado III del Formulario de referencia y a remitir las solicitudes recibidas al Decano de la Facultad, Director del Colegio Regional u Oficina Administrativa a que pertenezca el interesado.

CUARTA: Antes del 31 de marzo de cada año, los Decanos de las Facultades Directores de Colegios Regionales u Oficinas Administrativas elevarán las Solicitudes de Diferimiento que hayan recibido, con las recomendaciones que estimen pertinentes, al Rector de la Unidad Institucional correspondiente, por conducto del Decano de Administración o Funcionario con facultades análogas.

QUINTA: Antes del 15 de abril de cada año, los Rectores de las Unidades Institucionales elevarán las Solicitudes de Diferimiento que hayan recibido, con las recomendaciones que estimen pertinentes, al Presidente de la Universidad de Puerto Rico, por conducto de la Oficina de Asuntos Académicos de la Administración Central.

SEXTA: Del 16 al 30 de abril de cada año, la Oficina de Asuntos Académicos revisará la documentación presentada y preparará una relación de los casos sometidos, expresando los nombres y circunstancias principales, especialmente la función que realiza cada solicitante. El Presidente de la Universidad de Puerto Rico elevará al Consejo de Educación Superior

las Solicitudes de Diferimiento que haya recibido, con las recomendaciones que estime pertinentes, conjuntamente con la relación de casos antes mencionada, por conducto de la Oficina del Secretario Ejecutivo del Consejo.

SEPTIMA: En la primera sesión del mes de mayo, el Consejo de Educación Superior conocerá y resolverá sobre estas peticiones, a todos los efectos ulteriores procedentes.

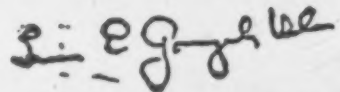
OCTAVA: Diez (10) días después de la sesión del Consejo, el Secretario Ejecutivo del Consejo procederá a certificar lo resuelto en cada una de las Solicitudes de Diferimiento, reteniendo el original de las mismas y devolviendo las copias a la Oficina de Asuntos Académicos para su posterior distribución, enviando además dos copias certificadas del acuerdo que haya recaído.

NOVENA: Diez (10) días después de haber recibido las copias certificadas de las Solicitudes de Diferimiento y las Certificaciones del Acuerdo correspondiente, la Oficina de Asuntos Académicos se ocupará de remitir:

1. una de dichas certificaciones del acuerdo del Consejo de Educación Superior a la Oficina Central de Personal;
2. una copia certificada de cada una de las Solicitudes de Diferimiento al Sistema de Retiro de la Universidad de Puerto Rico;

3. una copia certificada de cada una de las Solicitudes de Diferimiento del Personal de cada una de las Unidades Institucionales a sus correspondientes Decanatos de Administración o unidades análogas, a los efectos de ser unidas a los respectivos expedientes, por la Oficina de Personal que proceda;
4. una copia certificada de cada una de las Solicitudes de Diferimiento del Personal de Cada una de las Facultades, Colegios Regionales u otras unidades administrativas, a sus respectivas Oficinas, para su conocimiento y demás efectos procedentes;
5. una copia certificada de cada una de las Solicitudes de Diferimiento del Personal de todo el Sistema Universitario a los propios interesados, a sus direcciones oficiales.

Y para que así conste, expido la presente certificación bajo el sello de la Universidad de Puerto Rico, Río Piedras, Puerto Rico, hoy 9 de febrero de 1973.



Luis E. González Vales
Secretario Ejecutivo

COUNCIL OF HIGHER EDUCATION
UNIVERSITY OF PUERTO RICO
RIO PIEDRAS, PUERTO RICO

1972-73
Certification number 59

I, Luis F. González Vales, Executive Secretary of the Council of Higher Education, CERTIFY:-----

That the Council of Higher Education in its ordinary meeting of February 9, 1973 approved the following

COMPLEMENTARY RULES TO HANDLE THE POSTPONEMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL

I. Ruling base and its interpretation

The dispositions that rule the Postponement of the Obligatory Retirement are: A.-Article 1 of Section 5 of Chapter III of the Regulations of the University of Puerto Rico and B.- Section 14 of Article 5 of the Resolution of the Council of Higher Education, of November 28, 1950, which established the Retirement System of the University of Puerto Rico, which we cite below:

- A. "All member of the teaching personnel not affiliated to the Pensions Plan of the University will be retired without pension upon reaching age 65. Said retirement will be effective on June 30 subsequent to the date in which the professor becomes 65 years old. At the request of the affected professor and with the approval of the Council of Higher Education, said retirement could be postponed after the professor has become 65 years old for additional periods of one year each. Nevertheless, at no time the postponement of said retirement will be allowed after July 1st subsequent to the date in which the professor becomes 70 years old.

This article does not apply to the teaching personnel who renders services based on a contract with distinction of title nor extraordinary professors and visitors of whom the University interests to take advantage in determined academic tasks."

- B. "Obligatory Retirement: From July 1st, 1950 all member who has reached the age of 65 will be retired, with effectivity on June 30 following the date in which he becomes said age. Through written request from a member, approved by the Council of Higher Education, the retirement of said member could be postponed after the age of 65, for period of 1 year; but in no case said postponement could pass of July 1st following the date in which the member reaches the age of 70 years."

The initial premise, common to the two dispositions previously transcribed, is that all member of the university personnel, upon reaching the age of 65, will be retired of the active service, with effectivity on the following June 30. The difference between both dispositions is based in that the second has to do with the members of the Retirement System of the University of Puerto Rico, whom will be retired with the right to receive the corresponding retirement, while the first disposition refers to those whom to not belong to said Retirement System, whom will not receive any retirement, upon being retired.

The right to decide if they want to request the Postponement of the Retirement for the following fiscal year, will correspond to those interested whom will become from 65 to 69 years old from the 1st of July to the 30th of June of each fiscal year. It will be the responsibility of those interested to perform said petition within the terms and conditions pointed out in the dispositions previously reproduced and in these Rules, which will be of application to all the personnel of the university, except of those under contract of service and the extraordinary professors and visitors.

II. Regarding the Right to Postponement and its Obligations

FIRST: It will be the obligation of the superior officials of the promoter to inform favorably or unfavorably the Request of the Postponement, being able to formulate the observations deemed pertinent, to the effects that the Council of Higher Education could resolve finally that considered adequate.

SECOND: All the Requests of Postponement of the Retirement will be formulated for the following complete fiscal year and without exceeding from same, during which term the interested party compromises to continue collaborating with the Institution, being impeded to acquire, during said period, to the benefits of the voluntary retirement.

THIRD: No payment will be made charged to the funds of the Retirement System of the University of Puerto Rico for the concept of voluntary retirement, to no member of the University Personnel to whom Postponement of the Retirement has been granted during the year to which said petition is contracted, for understanding that upon fulfilling the Request of Postponement he is waiving for a year to the right of acquiring the voluntary retirement.

FOURTH: After June 30th of each year no payment will be made against the budgeting accounts of the University, correspondant to salaries, in favor of the members of the University Personnel which are subject to the Obligatory Retirement, in case that it has not been requested and finally approved the Postponement of same.

III. Regarding the Handling of the Postponement

FIRST: From the 1st to the 14th of February of each year, the Personnel Offices of each of the Institutional and Administrative Units of the Sistem of the University, will determine which members of the University Personnel are subject to the Obligatory Retirement at Jun 30 of that year. Said offices will proceed to notify so to the interested, through the respective deaneries or administrative units, advising them of their right to request Postponement of Obligatory Retirement, for which a set of the forms will be remitted that to the effect the Personnel Office of the Central Administration has edited for all the University System.

SECOND: From February 15 to the 28th of each year, the members of the University Personnel, whom are interested in requesting the Postponement of the Obligatory Retirement will proceed to fulfill and suscribe Blank I of the corresponding form. As well, within this term, they should obtain from the Medical Service of the corresponding Institutional Unit the Medical Certification which will be mentioned in Blank II of said form, relative to the health condition of the interested. Also, it is to the discretion of the Executive to utilize as a guide for the medical examination form OP-12. Finally, the interest should return this documento to the Personnel Office of his Institutional Unit.

THIRD: Prior to March 15 of each year, The Personnel Office of the Institutional Unit or corresponding Administrative Unit will proceed to fulfill and certify the particulars to which Item III contracts of the Form of reference and to remit the requests received to the Faculty Dean, Director of the Regional College or Administrative Office to which the interested belongs to.

FOURTH: Prior to March 31 of each year, the Deans of the Faculties, Directors of the Regional Colleges or Administrative Offices will elevate the Requests of Postponement received, with the recommendations they deem pertinent, to the Rector of the corresponding Institutional Unit, through the Dean of Administration or Official with alike faculties.

FIFTH: Prior to April 15th of each year, the Rectors of the Institutional Units will elevate the Requests of Postponement received, with the recommendations deemed pertinent, to the President of the University of Puerto Rico, through the Offices of Academic Matters of the Central Administration.

SIXTH: From April 16 to 30 of each year, the Office of Academic Matters will review the documentation presented and will prepare a relation of the cases submitted, expressing the names and principal circumstances, specially the function that each applicant performed. The President of the University of Puerto Rico will rise to the Higher Education Council

the Requests of Postponement received, with the recommendations deemed pertinent, jointly with the relation of cases previously mentioned, through the Office of the Executive Secretary of the Council.

SEVENTH: In the first session of the month of May, the Council of Higher Education will learn and resolve over these petitions, to all the ulterior proceeding effects.

EIGHTH: Ten (10) days after the session of the Council, the Executive Secretary of the Council will proceed to certify the results in each of the Requests of Postponement, retaining the original of same and returning the copies to the Office of Academic Matters for it's posterior distribution, also remitting two certified copies of the agreement reached.

NINTH: Ten (10) days after having received the certified copies of the Requests of Postponement and the Certifications of the corresponding Agreement, the Office of Academic Matters will take care of remitting:

1. one of said certifications of the agreement of the Council of Higher Education to the Central Office of Personnel;
2. one certified copy of each of the Requests of Postponement to the Retirement System of the University of Puerto Rico;

3. one certified copy of each one of the Requests of Postponement of Personnel of each of the Institutional Units to their corresponding Deaneries of Administration or alike units, to the effects of being made part of the corresponding files, by the Personnel Office proceeding;
4. one certified copy of each one of the Requests of Postponement of Personnel of Each one of the Faculties, Regional Colleges or other administrative units, to their respective Offices, for their knowledge and other proceeding effects;
5. one certified copy of each of the Requests of Postponement of Personnel of all the University System to the interested themselves, to their official addresses.

And to make it evident, I issue the present certification under the seal of the University of Puerto Rico, Rio Piedras, Puerto Rico, today, February 9, 1973.

(Signed) Luis E. González Vales
Executive Secretary

SOLICITUD DE DIFERIMIENTO DE RETIRO OBLIGATORIO
DE PERSONAL UNIVERSITARIO

EXHIBIT 3

INSTRUCCIONES:

Sométase este formulario en original y cuatro copias, no más tarde del 14 de febrero, si cumple de 65 a 69 años de edad a más tardar el 30 de junio de este año. Trámítase en el orden establecido al enumerar los Apartados.

DISTRIBUCION: (Después de que se haya terminado todo el proceso)

Original: Al Consejo de Educación Superior, copias: 1ra. al interesado; 2da. al Decano, al Director del Colegio Regional o al Director de la Oficina Administrativa; 3ra. a la Oficina de Personal correspondiente; y 4ta. al Sistema de Retiro de la Universidad de Puerto Rico.

Señor Presidente:

De acuerdo con las disposiciones de la Sec. 5 del Cap. III del Reglamento Universitario y con la Sec. 14 del Art. 5 de la Resolución del Consejo de Educación Superior del 28 de noviembre de 1950, que estableció el Sistema de Retiro de la Universidad de Puerto Rico, las cuales autorizan al personal universitario a solicitar diferimiento de la jubilación obligatoria al alcanzar la edad de 65 años, por la presente pido se me conceda diferimiento de dicha obligación hasta el 30 de junio de 19___. Al radicar esta solicitud me comprometo a continuar colaborando con la Institución durante el mencionado período.

I. Información a ser suplida por el solicitante:

1. Nombre completo RATIMIR MAXIMILIAN PERSHE
2. Fecha de Nacimiento Mayo 24, 1916
3. Años de servicio bajo diferimiento de retiro obligatorio 0
4. Soy miembro del Sistema de Retiro de la Universidad de Puerto Rico SI ☒ NO ☐
5. Rango o Título Profesor de Leyes
6. Departamento u Oficina Escuela de Derecho
7. Facultad o Unidad Administrativa U.P.R.
8. Recinto o Unidad Institucional Río Piedras

2 de abril de 1981

FECHA

R. Mar Pershe

FIRMA DEL SOLICITANTE

II. Certificado Médico, expedido por un Facultativo del Servicio Médico del Recinto o de la Unidad Institucional correspondiente:

Yo, Noel Rivera Torres, MD, luego de haber practicado el examen de rigor a PROF. R. MAX Pershe (use letra de molde), utilizando al efecto el formulario OP-12 que se acompaña a esta solicitud, certifico que su estado de salud es satisfactorio y está capacitado para desempeñar las tareas propias de su cargo, según fueron éstas descritas por el interesado.

2 de abril de 1981

FECHA

Noel Rivera Torres, MD
FIRMA DEL MEDICO EXAMINADOR DEL
RECINTO O UNIDAD INSTITUCIONAL

III. Para uso de la Oficina de Personal de la Unidad Institucional o Administrativa:

1. Nombre del solicitante Ratimir Maximilian Parsha
2. Fecha de Nacimiento 24 de mayo de 1916
3. ☐ Tiene ☒ No tiene Certificación del Acta de Nacimiento.
4. Al 30 de junio de 1981 tendrá 65 años de edad.
5. Rango o Título Catedrático
6. Tipo de nombramiento Permanente
7. Departamento u Oficina Oficina del Decano
8. Facultad o Unidad Administrativa Facultad de Derecho
9. Facultad o Unidad Institucional Universidad de Puerto Rico

Certificado por: Quié Llanos Jr.
DIRECTOR DE PERSONAL

IV. Información a ser suplida por el Decano de la Facultad o Director de la Oficina en la cual el solicitante presta servicios:

- a) Tareas que se le asignarán, de concedérsele el diferimiento:

Terminar investigación sobre la Teoría Biofísica del
Derecho, en lo cual ha estado trabajando desde hace
mucho tiempo, habiéndosele concedido sabática en 1972 y
en 1979 para esos propósitos.

- b) Se recomienda esta petición ☐ Favorablemente ☒ Desfavorablemente

Observaciones: El Comité de Personal recomendó desfavora-
blemente esta petición por entender que existen dificultades
de comunicación en este profesor.

14 de abril de 1981
FECHA

DECANO DE LA FACULTAD, DIRECTOR DEL
COLEGIO REGIONAL U OFICINA

V. Para uso de la Oficina del Rector o Director de la Unidad Institucional:

Se recomienda esta petición ☐ Favorablemente ☒ Desfavorablemente

Observaciones: _____

14 de abril de 1981
FECHA

Antonio Miró Montilla
RECTOR DEL RECINTO O DIRECTOR DE LA
UNIDAD INSTITUCIONAL

VI. Para uso de la Oficina del Presidente de la Universidad:

Habiendo examinado la presente solicitud de diferimiento de retiro,
la recomiendo ☐ Favorablemente ☒ Desfavorablemente

Observaciones: _____

APR 22 1981

FECJA

[Handwritten signature]

VII. Certificación de lo resuelto por el Consejo de Educación Superior:

La solicitud que antecede fue aprobada ☐, desaprobada ☒,
según acuerdo de este organismo, Núm. 175 de fecha 29 de mayo
de 1981.

[Handwritten signature]
SECRETARIO EJECUTIVO

RSI/cd

OCP-39
Rev. January 1972

UNIVERSITY OF PUERTO RICO
CENTRAL ADMINISTRATION

APPLICATION OF POSTPONEMENT OF OBLIGATORY
RETIREMENT OF THE UNIVERSITY PERSONNEL

INSTRUCTIONS:

Submit this form in original and four copies, no later than February 14, if you become from 65 to 69 years old the latest on June 30 of this year. Carry through in the order established upon numbering the Blanks.

DISTRIBUTION: (After the entire process has been concluded)

Original: To the Council of Higher Education, copies: 1st. to the interested; 2nd. to the Dean, the Director of Regional College or the Director of the Administrative Office; 3rd. to the corresponding Personnel Office; and 4th. to the Retirement System of the University of Puerto Rico.

Mr. President:

According to the dispositions of Sec. 5 of Chap. III of the University Regulation and with Sec. 14 of Art. 5 of the Resolution of the Council of Higher Education of November 28, 1950, which established the Retirement System of the University of Puerto Rico, which authorize the university personnel to request a postponement of the obligatory pensioning upon reaching age 65, through the present I request a postponement be granted to me of said obligation until June 30 of 19 . Upon filing this request I compromise to continue collaborating with the Institution during said period.

I. Information to be supplied by the applicant:

1. Complete name - RATIMIR MAXIMILIAN PERSHE
2. Birthdate-May 24, 1916
3. Years of service under postponement of obligatory retirement-0
4. I am a member of the Retirement System of the University of Puerto Rico-YES ☒ NO ☐
5. Rank or Title-Law Professor
6. Department or Office - Law School
7. Faculty or Administrative Unit - U.P.R.
8. Precinct or Institutional Unit - Rio Piedras

April 2, 1981

(signed) R. Max Pershe

DATE

SIGNATURE OF APPLICANT

II. Medical Certificate issued by a Physician of the Medical Service of the Precinct or the corresponding Institutional Unit:

I, Noel Rivera Torres, MD, after having performed the (use print) due examination to Prof. R. Max Pershe, utilizing to the effect the form OP-12 accompanied to this request, I certify that his health status is satisfactory and is capable to perform the due chores of his appointment, as these were described by the interested.

April 2, 1981

(signed) Noel Rivera Torres, M.D.

DATE

SIGNATURE OF THE EXAMINING
DOCTOR OF THE PRECINCT OR INSTITUTIONAL
UNIT

III. For the use of the Personnel Office of the Institutional Unit or Administrative Unit.

1. Name of applicant - Ratimir Maximilian Perse
2. Date of Birth - May 24, 1916
3. ☐ Has ☒ Does not have a Birth Certificate certification.
4. At June 30, 1981 will be 65 years old.
5. Rank or Title - Professor
6. Type of appointment - Permanent
7. Department or Office - Dean's Office
8. Faculty or Administrative Unit - Law Faculty
9. Faculty or Institutional Unit - University of Puerto Rico

Certified by: _____ (signed)
PERSONNEL DIRECTOR

IV. Information to be supplied by the Dean of the Faculty or Director of the Office in which the applicant renders services:

- a) Tasks that will be assigned to him, if the postponement is granted:

To conclude the investigation of the Biophysic Theory of the Law, in which he has been working since a long time ago, having been granted sabbatical in 1972 and on 1979 for those purposes.

- b) This petition is recommended ☐ Favorably ☒ Unfavorably
Observations: The Personnel Committee recommended unfavorably this request for understanding that difficulties exist in communication with this professor.

April 14, 1981 (signed) DEAN OF FACULTY, DIRECTOR OF
DATE REGIONAL COLLEGE OR OFFICE

V. For the use of the Office of the Rector or Director of the Institutional Unit:

This request is recommended ☐ Favorably ☒ Unfavorably
Observations: _____

April 14, 1981 (signed) Antonio Miró Montilla
DATE RECTOR OF THE PRECINCT OR DIRECTOR OF THE INSTITUTIONAL UNIT

VI. For the use of the Office of the President of the University:

Having examined the present application of retirement postponement, I recommend it ☐ Favorably ☒ Unfavorably

Observations: _____

APR 22 1981 (sealed)

DATE

(Signed) I. Almodovar

PRESIDENT

VII. Certification of the resolution by the Council of Higher Education:

The application that preceeds was approved ☐, disapproved ☒ as per agreement of this organism, No. 175 dated May 29, 1981.

(signed) Luis E. González

EXECUTIVE SECRETARY

RSI/cd

J1

AB2-111

P243

CONSEJO DE EDUCACION SUPERIOR
UNIVERSIDAD DE PUERTO RICO
Rio Piedras, Puerto Rico

1981-82

Certificación número 32E

Yo, Luis E. González Vales, Secretario Ejecutivo del Consejo de Educación Superior, CERTIFICO:-----

Que el Consejo de Educación Superior en su reunión del 16 de septiembre de 1981 aprobó la siguiente resolución en relación con la Moción de Reconsideración radicada por el Dr. Ratimir Maximilian Pershe ante la denegatoria por parte del Consejo del diferimiento de retiro obligatorio solicitado por dicho profesor:


Este Consejo de Educación Superior estudió la solicitud de diferimiento de retiro obligatorio radicada por el Dr. Ratimir Maximilian Pershe.

Las disposiciones que rigen el diferimiento de retiro obligatorio están recogidas en la Certificación número 59 (1972-73) del Consejo de Educación Superior donde también se establece el procedimiento a seguirse con relación a la solicitud de diferimiento del retiro obligatorio y los trámites ulteriores a la radicación de dicha solicitud.

Es enteramente discrecional del Consejo de Educación Superior la decisión final de lo que considera adecuado ante estas solicitudes.

Estudiado todo el expediente del caso junto con la opinión legal de los asesores del Consejo, se declara sin lugar la reconsideración radicada por el doctor Pershe y se reafirma este Consejo en su decisión anterior de denegar la solicitud sobre diferimiento del retiro obligatorio del doctor Pershe.

Y para que así conste, expido la presente certificación bajo el sello de la Universidad de Puerto Rico, en Rio Piedras, Puerto Rico, hoy día veinticinco de septiembre de mil novecientos ochenta y uno.


Luis E. González Vales
Secretario Ejecutivo

COUNCIL OF HIGHER EDUCATION
UNIVERSITY OF PUERTO RICO
Rio Piedras, Puerto Rico

1981-82
Certification number 32E

I, Luis E. González Vales, Executive Secretary of the Council of Higher Education, CERTIFY:-----

That the Council of Higher Education in its meeting of September 15, 1981 approved the following resolution with the Motion of Reconsideration filed by Dr. Ratimir Maximilian Pershe before the denial on part of the Council of the postponement of the obligatory retirement requested by said professor:

This Council of Higher Education studied the request of postponement of the obligatory retirement filed by Dr. Ratimir Maximilian Pershe.

The dispositions that rule the postponement of obligatory retirement are compiled in Certificate number 59 (1972-73) of the Council of Higher Education where the procedures to be followed is also established regarding the request of postponement of the obligatory retirement and the ulterior transactions to the filing of said request.

It is entirely discretionary of the Council of Higher Education the final decision of what it considers adequate before these requests.

Studied the entire file of the case together with the legal opinion of the Council's advisors, the reconsideration filed by doctor Pershe is declared without cause and this Council ratifies its previous decision of denying the request of postponement of the obligatory retirement of doctor Pershe.

And to make it evident, I issue the present certification under the seal of the University of Puerto Rico, in Rio Piedras, Puerto Rico, today, the twenty fifth of September of nineteen hundred eighty one.

(signed) Luis E. González Vales
Executive Secretary

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE SAN JUAN

RATONER MANUELILAN TERRELL

CIVIL NUM. 81-6055 (907)

Recurrente

SOBRE:

v.

ENRIQUE IRIZARRY, PRES. CONSEJO
EDUCACION SUPERIOR, Y OTROS

SOLICITUD DE REVISION

Recurridos

SENTENCIA

Examinados los autos del caso y la Sentencia del Tribunal Supremo
revocando nuestra Resolución del 4 de febrero de 1982, se declara sin
lugar la Petición de Revisión en este caso. El recurrente no ha demos-
trado que la parte recurrida abusara de su discreción al denegarle la
solicitud de dispensa ni que tuviera un derecho claro a ser oído.

Regístrese y Notifíquese.

En San Juan, Puerto Rico, a 29 de noviembre de 1982.

(4da.)
PIERRE ORTIZ
JUEZ

App D(1)

J*242

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN CHAMBER

RATIMIR MAXIMILIAN PERSHE

CIVIL NO. 81-6055 (907)

Petitioner

ABOUT:

v.

PETITION FOR REVIEW

ENRIQUE IRIZARRY, PRES. OF THE
COUNCIL OF HIGHER EDUCATION,
AND OTHERS

Respondents

JUDGMENT*

Having examined the records of the case and the Judgment of the Supreme Court overruling our Decision of the 4th of February, 1982, I deny the Petition for Review in this case. The petitioner has not shown that the respondents abused their discretion by denying him the petition for dispensation, neither that he had a clear right to be heard.

Enter and Serve.

In San Juan, Puerto Rico, this 29th day of November, 1982.

[signed]
PETER ORTIZ
JUDGE

*Summary Judgment (this footnote is supplied by the appellant).NOTE: This document has been translated by the appellant.

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

J160

Nativir Maximilian Pershe,

Recurrido,

v.

Enrique Irizarry, etc.,

Peticionarios.

Núm. O-82-185

Certiorari

SENTENCIA

San Juan, Puerto Rico, a 18 de mayo de 1982.

Al cumplir 67 años de edad el recurrido solicitó de la Sala de la reglamentación que le eximiera de las funciones docentes en la Universidad de Puerto Rico. La dispensa le fue negada. Recurrió a los tribunales.

El Tribunal Superior, Sala de San Juan concluyó que "tratándose de un derecho o interés propietario seriamente afectado, existe una posibilidad real de que el peticionario prevalezca en los méritos de su petición". Por así entenderlo decretó que se le permitiera "seguir ejerciendo como profesor de la Escuela de Derecho en tanto en cuanto se resolviera en sus méritos este recurso".

Acudió la Universidad a revisar esa orden y concedimos un término al recurrido.

La comparecencia del recurrido no persuade. Conceder o no una dispensa es discrecional de la administración universitaria. Bien claro lo establece el Reglamento pertinente al disponer que la jubilación o el retiro según sea el caso "podrá diferirse".

Se expide el auto solicitado y se deja sin efecto la resolución dictada por el Tribunal Superior, Sala de San Juan el 4 de febrero de 1982.

Así lo pronunció y manda el Tribunal y certifica la señora Secretaria. El Juez Presidente señor Tomás Méndez no interviene.



Lady Alfonso de Cumpiano
Secretaria

AT THE SUPREME COURT OF PUERTO RICO

Ratimir Maximilian Pershe,

Recurred

v.

Enrique Irizarry, etc.,

Petitioner

No. 0-82-185

Certiorari

JUDGMENT

San Juan, Puerto Rico, May 18, 1982.

Upon becoming 65 years of age the recurred requested to be exempted of the regulation which requests his separating from his educational functions in the University of Puerto Rico. The exemption was denied. He recurred to the courts.

The Superior Court, San Juan Section concluded that "being a right or proprietary interest seriously affected, a real possibility exists that the petitioner preponderates in the merits of his petition". For understanding so he determined to be allowed to "continue executing as professor of the Law School as respects and and much this recourse is resolved in its merits".

The University went to revise said order and we granted a term to the recurred.

The appearance of the recurred does not persuade. To grant or not an excuse is discretional of the university's administration. It is clearly established by the pertinent Regulation upon disposing that the retirement or pensioning as the case may be "could be deferred".

The requested act is issued and the resolution dictated left without effect by the Superior Court, San Juan Section on February 4, 1982.

So it was pronounced and ordered by the Court y and certifies the Secretary. The Presiding Judge, Mr. Trias Monge does not intervene.

(signed) Lady Alfonso de Cumpiano
Secretary

12-72
J/23
EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Ratimir Maximilian Pershe,

Recurrido,

v.

Enrique Irizarry, etc.,

Peticionarios.

Núm. O-82-185

Certiorari

RESOLUCION

San Juan, Puerto Rico, a 26 de marzo de 1982.

Se concede a la parte recurrida un término de 5 días a partir de la notificación de esta Resolución para mostrar causa por la cual no deba dejarse sin efecto la orden dictada por el Tribunal Superior, Sala de San Juan, Ortiz, J., en el caso civil #81-6055 (906) habida cuenta que el otorgar el diferimiento solicitado por el Profesor Pershe es de la absoluta discreción de las autoridades universitarias. En auxilio de nuestra jurisdicción se suspenden los efectos de la orden recurrida.

Lo acordó el Tribunal y certifica la señora Secretaria. El Juez Presidente señor Trías Monge y el Juez Asociado señor Negrón García no intervinieron.

Lady Alfonso de Cumpiano
Secretaria

AT THE SUPREME COURT OF PUERTO RICO

Ratimir Maximilian Pershe,

Recurred

v.

Enrique Irizarry, etc.,

Petitioners

No. 0-82-185

Certiorari

RESOLUTION

San Juan, Puerto Rico, March 26, 1982.

The recurrent party is granted a term of 5 days from the notification of this Resolution to show cause for which the order dictated by the Superior Court, San Juan Branch, should not be left without effect, Ortiz, J., in the civil case #81-6055 (906) having account that the granting of the postponement requested by Professor Perche is of the absolute discretion of the university authorities. In assistance of our jurisdiction the effects of the recurred order are suspended.

The Court resolved and the Secretary certifies. The Presiding Judge Mr. Trias Minge and the Associated Judge, Mr. Negrón García do not intervene.

(signed) Lady Alfonso de Cumpiano
Secretary

J 839

CONSEJO DE EDUCACIÓN SUPERIOR
UNIVERSIDAD DE PUERTO RICO
Río Piedras, Puerto Rico

1980-81

Certificación número 175

Yo, Luis E. González Vales, Secretario Ejecutivo del Consejo de Educación Superior, CERTIFICO:-----

Que el Consejo de Educación Superior, en su reunión del 13 de mayo de 1981 consideró las Solicitudes de Diferimiento de Retiro Obligatorio y acordó lo siguiente:

1- Conceder diferimiento de retiro para el año 1981-82 a las siguientes personas:

Recinto Universitario de Río Piedras

Elna LaVerne Walker	Facultad de Estudios Generales
Eduardo Montouillies García	Escuela Graduada de Planificación
José Ferrer Canales	Facultad de Humanidades
Felix Joglar Rosa	Facultad de Pedagogía

Recinto de Mayaguez

Francis K. S. Koo	Facultad de Artes y Ciencias
Manuel Díaz Piferrer	Facultad de Artes y Ciencias
Lucila M. Díaz Piferrer	Facultad de Artes y Ciencias

Facultad de Ciencias Médicas

William Edinson	Facultad de Medicina
Irvine Fox	Facultad de Medicina
Candida Larracabal de Barras	Facultad de Medicina
Leo Porchin	Facultad de Odontología
Stoney Raye	Instituto de Medicina Forense
Rafael Criado A. Munategui	Instituto de Medicina Forense
Aida Berkman de Licardi	Escuela de Enfermería
Adelaida Sanavitis	Colegio de Profesiones Relacionadas con la Salud

J840

F692

-2-

1980-81

Certificación número 175

Administración de Colegios Regionales

Bonifacio Rivera González	Colegio Universitario Tecnológico Arecibo
Mariberto de Jesús Rivera	Colegio Universitario Tecnológico Arecibo
Benito Cabrera Medina	Colegio Universitario Tecnológico Arecibo
Luis L. Martínez Fernández	Colegio Regional de Ponce
Pascual Reyes	Colegio Universitario Tecnológico Bayamón

2. Conceder diferimiento de retiro por el mes de julio de 1981 a:

Jose P. Fernández Miranda Colegio Regional de Carolina

3. Denegar el diferimiento de retiro a las siguientes personas:

Recinto Universitario de Río Piedras

Conchita Monfeldt Hosta	Biblioteca General
Arístides Velez Posario	Facultad de Estudios Generales
Angel G. Bracero Rivera	Departamento de Terrenos y Edificios
Emiliano Posado López	Departamento de Terrenos y Edificios
Esteban Maximilian Pershe	Escuela de Derecho

Y para que así conste, expido la presente certificación bajo el sello de la Universidad de Puerto Rico, en Río Piedras, Puerto Rico, hoy día veintinueve de mayo de 1981.



Luis E. González Vales
Luis E. González Vales
Secretario Ejecutivo

JURAMENTO

Yo, Esteban Maximilian Pershe, mayor de edad, casado, catequista universitario y vecino de Río Piedras, Puerto Rico, bajo juramento declaro que la presente fotocopia de este documento es copia fiel y exacta de su original.

Esteban Pershe
DECLARANTE

Atestado por mí, Notario Público, en el día 26 de mayo de 1981, en Río Piedras, Puerto Rico, ante mí, Esteban Maximilian Pershe, de edad y estado civil como se declara, y a quien conozco y he conocido por espacio de 26 años, en virtud de lo cual:

Alberto E. Lugo Jener
NOTARIO PÚBLICO

COUNCIL OF HIGHER EDUCATION
UNIVERSITY OF PUERTO RICO
Rio Piedras, Puerto Rico

1980-81
Certification number 175

I, Luis E. González Vales, Executive Secretary of the Council of Higher Education, CERTIFY-----

That the Council of Higher Education, in its meeting of May 13, 1981 considered the Requests of Postponement of Obligatory Retirement and agreed the following:

- 1- Grant retirement postponement for the year 1981-82 to the following persons:

Rio Piedras University Precinct

Elna LaVerne Walker	General Studies Faculty
Eduardo Montoulieu García	Planning Graduate School
José Ferrer Canales	Humanities Faculty
Félix Joglar Rosa	Pedagogy Faculty

Mayaguez Precinct

Francis R. S. Koo	Art and Science Faculty
Manuel Diaz Piferrer	Art and Science Faculty
Lucila M. Diaz Piferrer	Art and Science Faculty

Medical Science Precinct

Nathan Rifkinson	Medicine Faculty
Irving Fox	Medicine Faculty
Candida Larrazabal de Barras	Medicine Faculty
Leo Rorchin	Odonthology Faculty
Sidney Kaye	Forense Medicine Institute
Rafael Criado A. Unategui	Forense Medicine Institute
Aida Berkman de Lizardi	Infirmery School
Adelaida Sanavitis	College of Professionals Related with the Health

Regional Colleges Administration

Bonifacio Rivera González	University College of Technology-Arecibo
Heriberto de Jesús Rivera	University College of Technology-Arecibo
Benito Cabrera Medina	University College of Technology-Arecibo
Luis L. Martinez Fernandez	Ponce Regional College
Pascual Reyes	University College of Technology-Bayamon

2. Grant postponement of retirement for the month of July of 1981 to:

José P. Fernandez Miranda Carolina Regional College

3. Deny the postponement of retirement to the following persons:

Rio Piedras University Precinct

Conchita Monefeldt Hosta	General Library
Andres Vélez Rosario	General Studies Faculty
Angel G. Bracero Rivera	Land and Building Department
Etanislao Rosado López	Land and Building Department
Ratimir Maximilian Pershe	School of Law

And to make it evident, I issue the present certification under the seal of the University of Puerto Rico, in Rio Piedras, Puerto Rico, today May ywenty nine, 1981.

(signed) Luis E. González Vales
Executive Secretary

OATH

I, Ratimir Maximilian Pershe, of legal age, married, university professor and neighbor of Rio Piedras, Puerto Rico, under oath state that the present photocopy of this document is a true and exact copy of its original.

(signed) R. M. Pershe
DECLARER

Affidavit number 92

Sowrn and suscribed before me by Ratimir Maximilian Pershe, of the personal circumstances stated above, and whom I know personally in San Juan, Puerto Rico, November 26, 1982; of all of which I ATTEST.

(Signed) Alberto B. Lugo Janer
NOTAPY PUBLIC

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

J 11611
999.15

Ratimir Maximilian Pershe,

Peticionario,

v.

Enrique Irizarry, Presidente
del Consejo de Educación
Superior y otros,

Recurridos.

Núm. O-83-48

Certiorari

RESOLUCION

San Juan, Puerto Rico, a 26 de mayo de 1983.

A la anterior moción de reconsideración, vistas
nuestras Resoluciones de 24 de marzo, 14 de abril
y 5 de mayo del corriente, aténgase a lo dispuesto.

Lo acordó el Tribunal y certifica la señora
Secretaria. El Juez Presidente señor Trías Monge
se inhibió.

Lady Alfonso de Cumpiano
Secretaria

IN THE SUPREME COURT OF PUERTO RICO

J * 466
499.17

Ratimir Maximilian Pershe,

Petitioner

v.

Enrique Irizarry, President
of the Council of Higher
Education and others,

Respondents

Num. 10-83-48

Certiorari

DECISION

San Juan, Puerto Rico, this 26 day of May, 1983.

To the preceding motion for reconsideration*, in view of our Decisions of March 24, April 14 and May 5 of the current year, abide by that which has been decided.

This resolved the Court and certifies the Mistress Clerk of the Court. The Chief Judge Mister Trias Monge disqualified himself.

[Signed]

Lady Alfonso de Cumpiano
Clerk of the Court

[Official Seal of the Court]:
Commonwealth of Puerto Rico
General Court of Justice
Supreme Court

*Referring to the Fourth Motion for Reconsideration (this note is supplied by the appellant).

NOTE: This document has been translated into English by the appellant.